

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, OCTOBER 24, 2013
7:00 p.m.

in

Senior Center
806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Constantine Alexander, Chair
Timothy Hughes, Vice Chair
Brendan Sullivan, Member
Thomas Scott, Member
Janet Green, Member
Douglas Myers, Associate Member
S later W. Anderson, Associate Member

Ranjit Singanayagam,
Commissioner of Inspectional Services
Maria Pacheco, Zoning Secretary

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PROCEEDINGS

(7:00 p.m.)

(Sitting Members Case #10438: Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call the Zoning Board of Appeals to order. And as is our custom, we will hear first continued cases. And the first case to be heard will be 10438, 822 Somerville Avenue.

Is there anyone here wishing to be heard on this matter? Please come forward.

TIMOTHY HUGHES: So where were we?

FRED LEBOW: Fred Lebow. Just for the record, it's L-like lima, E-like in echo, B-like in baker, O-like in Oscar and W-like in whiskey.

So I've given, as you requested on our last hearing, I basically showed you, basically the three, I believe the three drawings that we asked for. And I'll just

turn them out. And if somebody doesn't have it, feel free to take it.

One shows the sign over the sill. And that's what this shows.

TIMOTHY HUGHES: That one I have.

FRED LEBOW: Yeah, I hope you have all of these. You should have them.

The second one shows that, with both just shows it so that you can just see the difference between the two. And this shows it on the top. It becomes -- I'll let everybody look at it.

TIMOTHY HUGHES: Go ahead.

FRED LEBOW: So it shows, it shows, of course it shows the problem right away, that the Potbelly sign is right there. Obviously people will be running into Potbelly's thinking that there's a Chinese restaurant. This has very poor visibility.

Of course HealthWorks is across the street which is on the second floor. The obvious -- you know, to me the obvious thing is that you want -- this city, which is the second wealthiest city in Massachusetts, the reason is because you guys really know how to bring in commercial business. I live in Brookline. We used to have 19 percent, we now have eight percent commercial and that tax burden solely rests on the residential property. In this town they have, you know, between 100 -- between 90 million and 120 million free cash and it's because of great commercial base that you people encourage. We certainly want this fellow to -- came from Phoenix, had a Chinese restaurant. He now has his food license. And he now has his entertainment license, and he's in mid-construction of his facility. So now

all those things are now in place. And with the help obviously with the Building Department, it will be very good. And you can see the problems with the sign being down here. The landlord does not want to cover up windows. I've sent him the copies to get their input. They have a layout for the mall. They're still developing the mall. And if you have gone by the mall, you can see that there's been a tremendous improvement of that mall over the last ten months. So a lot of money's been put in by the landlord, the tenants. We have a 6,000 square foot restaurant here. You know, if we had, if he doesn't succeed, there will be 6,000 feet -- which is probably most of the stores in there are 2,000 feet, I'll be back in here looking for three signs. This just works. So everybody wanted to see what this would

look like on an AutoCad. We generated it, and I just don't see a real good, you know, they don't have a lot of visibility. We want to do everything we can to help this fellow succeed in his business. And putting it on the second -- putting it on the first floor really, you can just see there's so much confusion. But you can make that decision by yourself -- for yourselves.

Thank you.

TIMOTHY HUGHES: Any questions from the Board?

I have one.

FRED LEBOW: Okay.

TIMOTHY HUGHES: This is the door that you go in for the Red Dragon to get to the second floor, where the sign is?

FRED LEBOW: No, that's not -- no, that's -- you go into Potbelly's.

TIMOTHY HUGHES: So where's the door for the Red Dragon?

FRED LEBOW: You have to go in through the mall. You go upstairs to the escalator.

TIMOTHY HUGHES: And this is not the entrance to the mall here?

FRED LEBOW: No.

TIMOTHY HUGHES: This goes directly into the Potbelly's?

FRED LEBOW: Yeah. Just like the same -- just like it was with Pizzeria Uno. Same door. We haven't changed the door. In fact, that's what Potbelly -- and they can put their chairs out there so people actually at one point have to walk through the chairs to get to -- because you can eat outside.

TIMOTHY HUGHES: How do you get into the building from this side?

FRED LEBOW: You have to go into -- you have to go into the other side or go through the parking lot.

TIMOTHY HUGHES: There's no street entrance to the escalator on Somerville Avenue?

FRED LEBOW: Correct.

THOMAS SCOTT: It's off the pedestrian mall.

FRED LEBOW: That's right.

THOMAS SCOTT: You have to kind of go in diagonally off the pedestrian mall.

TIMOTHY HUGHES: It's left over here underneath the Walgreens?

THOMAS SCOTT: Yes.

BRENDAN SULLIVAN: Tim, it's as if you were going into the Walgreens basically.

FRED LEBOW: Right. And remember when it was Pier 1? You would sort of go

in -- yeah. The mall itself isn't quite --

TIMOTHY HUGHES: Yes, yes, it hardly qualifies as a mall. Yes, I know.

Any other questions?

THOMAS SCOTT: I just want to comment that now that I see it in the location that we requested last time, I think it makes more sense on the higher wall parapet I guess if you will. The 20-foot mark is right in the middle of those windows which is impossible to put it at that height or lower. And when it's down low, it seems to be in conflict with the Potbelly's. And I think it would be confusing for patrons, you know, who may be trying to enter Potbelly's door to go into Red Dragon. I think it just -- I think the architecture is just dictating where it has to be unfortunately, but that's just my opinion.

TIMOTHY HUGHES: Any other comments or questions?

BRENDAN SULLIVAN: No. I just I really feel that it should be a notch higher than the 20 feet, not at the very top, but it should take out or cover that small band of windows. And I don't understand the, you know, it's sort of like a blanket statement where the owner says I don't want to block any windows. Well, I'm not sure if he fully understands what we're going through as far as the limitations on this height of the sign and the uselessness of those windows.

FRED LEBOW: Well, you know, when you look --

BRENDAN SULLIVAN: Because you're basically it would be like, like that.

FRED LEBOW: Sure.

BRENDAN SULLIVAN: That's exactly

what this condition is. And so to put a sign to block the insides of those with some kind of material and have the sign at that level across there, seems to work for me. Not at the higher level. I think it just junkies up the building. But that's exactly what you have on the inside of the restaurant which serves no real function.

FRED LEBOW: If you look at the whole mall in its entirety, obviously that would mess up the architecture of the mall. Obviously that's a personal opinion. I don't think it just wouldn't look right, but that's -- I mean architecturally it just doesn't work, and it certainly doesn't work for the owner. He's not covering up windows. He wants to keep them all consistent throughout the whole mall.

BRENDAN SULLIVAN: I think he wants

a tenant there. I think, you know, dollars and cents are going to dictate. He may have to back off on the position of I don't want to block out those windows. Anybody, anybody that occupies that space is going to come down looking for a sign and I'm just going to say not at the higher level.

FRED LEBOW: Let me put it this way, let me rephrase it. Let's assume this fellow isn't there and they rent out the three spaces, 2,000 square foot a spot, which is typically what the mall is. Now you've got three signs. Where are you going to put three signs? I mean, it just it doesn't work.

BRENDAN SULLIVAN: That's why it behooves the owner to keep, maintain this tenant and to have a concession as far as I don't want to block up those windows.

FRED LEBOW: Well,
that's -- obviously that's an opinion. I
don't agree with it, but that's fine.

BRENDAN SULLIVAN: Right.

TIMOTHY HUGHES: Any other comments
before I open it up to public testimony again?

(No Response.)

TIMOTHY HUGHES: Does anyone want to
be heard on this case?

(No Response.)

TIMOTHY HUGHES: Seeing no one, I
close public testimony.

I have to say I agree with Brendan. I
don't, you know, I don't know why it's not,
you know, it's in conflict with Potbelly's
and why isn't it over a door that actually
shows where how do you get into the mall if
it's going to be on the second floor? I don't
understand that.

Second, I don't understand why Potbelly's needs a fourth sign because they already have three.

FRED LEBOW: It's there now, they're operating.

TIMOTHY HUGHES: Any other comments on this?

THOMAS SCOTT: Did you reduce the size of the sign at all or is it the same as it was previously?

FRED LEBOW: From the originals we reduced the size.

THOMAS SCOTT: So it fits a little bit better within the confines of that area?

FRED LEBOW: Yeah, yeah. I mean we -- I mean, if, you know, if you said -- I mean, if you people said look, can you just drop it down a little bit, you know, that could be dropped down a little bit and put it,

you know, just over the window as opposed to where it is -- if we put it in the middle, does it look architecturally to us, you know, taking pictures and we jockey this thing around. You know, we have an architect in the office and it's an engineering company, but this -- this seemed to work the best. Obviously everybody has their opinion and that's -- you can -- these may be a little clearer for you.

TIMOTHY HUGHES: Slater.

SLATER ANDERSON: Where's the 20 feet?

THOMAS SCOTT: I think where it says 110.

FRED LEBOW: Yeah.

THOMAS SCOTT: Where it says 110.

FRED LEBOW: It goes right across.

THOMAS SCOTT: That's 20.

FRED LEBOW: Yeah. About halfway up the window.

JANET GREEN: I don't find it, in this case, and I usually, you know, I mean, we've looked at signs in this spot before and I haven't liked them at all and felt like they didn't -- that they didn't -- not only did they not contribute, that they were a negative. I don't find this sign that way at all. It seems to me it makes sense when I look at it, that that's where the sign is. And it is a very difficult location. You don't have a sign that goes in the door to the restaurant, but so I would -- I don't have a problem with where it is located.

TIMOTHY HUGHES: I don't have an aesthetic problem with where it's located. My problem is that there aren't any signs on the second floor on this building and I don't

want to be the one to vote for the first sign that goes on the second floor of that building.

FRED LEBOW: There won't be any other -- you know, there is no other tenant.

TIMOTHY HUGHES: And I don't know that. I don't know that the next time, you know, a tenant comes before us that we're not going to go through this whole game again.

BRENDAN SULLIVAN: You know, you mentioned it the last time there aren't any other tenants on the second floor other than the Walgreens. There's three other tenants there. There's the optical place. There is massage store or holistic care fellow that's next to the optical. And then there's a vacant spot there which is next to the Red Dragon. So there are actually two viable and a potential third, and this would be a

potential fourth.

FRED LEBOW: Right. The other people have already signed leases. They've been there. This is the only tenant --

BRENDAN SULLIVAN: I mean the statement --

FRED LEBOW: I was trying to -- it was over simplified.

BRENDAN SULLIVAN: The statement there were no other tenants on the second floor is not correct.

FRED LEBOW: There will be no other tenants who are requesting a sign onto where it is.

TIMOTHY HUGHES: That's an accurate statement. And the right now part is the operative part of that, because there's no, there's no reason why, you know -- if we start giving -- if we give you a sign on the second

floor, what's to prevent everybody that's on the second floor from coming in and looking for the same kind of relief.

FRED LEBOW: Pizzeria Uno was on the second floor. They were there before. I mean, you had it there before. This isn't something new.

TIMOTHY HUGHES: It's new for me.

FRED LEBOW: Oh, okay. Look it, we have the same regulation in Brookline and we've gone from 19.7 percent commercial to eight percent and it's become a real burden on the town. I mean, obviously we want -- you people want people to succeed. This gives them the best shot of succeeding. He's putting in -- I don't know, seven, eight hundred thousand dollars into his restaurant.

TIMOTHY HUGHES: I think the best

shot of a restaurant succeeding is to turn out a quality product. You know, I think the sign, yeah, it figures into the equation, but it's hot, it's not the be-all and end-all of the success of this business in this spot. I mean, if this is a good restaurant, if he turns out a good product, people will keep coming back it doesn't make a difference where the sign is. As long as people can find the restaurant.

FRED LEBOW: That's what the sign is there for.

TIMOTHY HUGHES: Right, exactly. So it doesn't -- I don't see the hardship of compromising the standard of 20 feet in this particular case. I don't find it -- I mean, aesthetically it looks good in the higher point but it doesn't look any better than the other one to me. So it's not -- as far as

aesthetics --

THOMAS SCOTT: How is the sign illuminated?

FRED LEBOW: I don't think it is illuminated.

THOMAS SCOTT: It's not illuminated?

FRED LEBOW: It's not illuminated.

THOMAS SCOTT: Oh, okay.

FRED LEBOW: We're trying to make it as less obvious as we can.

THOMAS SCOTT: I just feel like, Tim, we've approved signs much higher on much taller buildings.

TIMOTHY HUGHES: Yes, but I felt like there were reasons.

THOMAS SCOTT: Well, I think there's a good reason for this one to be here as well. It identifies that he's on the second floor.

He's not on the first floor. I think that's an important reason. I mean, people have to walk in the mall and go up that escalator to get to his place.

TIMOTHY HUGHES: That's true.

THOMAS SCOTT: You know?

TIMOTHY HUGHES: I understand that.

THOMAS SCOTT: There's no other way to get in.

FRED LEBOW: You can get in the parking lot.

TIMOTHY HUGHES: There isn't any sign there at all. So they're never going to find the restaurant from the parking lot.

FRED LEBOW: In fact, they've taken off a lot of signs and they've taken off a lot of awnings in the building. They used to have a lot of awnings on the building with names on it. The Pizzeria Uno and we took all

those signs off. We're trying to make a compromise as much as everybody can. I understand your position. Look it, you know, I sat on the advisory committee for 23 years, I just retired from that. I'm Chairman of the Naming Committee, the Board of Examiners. I mean, I know how difficult, cases come before us all the time, you know, but I think this merits approval. I'm bias.

TIMOTHY HUGHES: Well, of course you do.

Yes, I find myself in a really difficult spot here, don't I?

FRED LEBOW: You want to change spots?

TIMOTHY HUGHES: No, not exactly. I don't know.

JANET GREEN: It is a strong point that the restaurant is on the second floor.

TIMOTHY HUGHES: It's a point.

JANET GREEN: It is a point.

TIMOTHY HUGHES: I'm not sure it's a strong point.

SLATER ANDERSON: I'm a little frustrated that, you know, we did ask you to come back and you did come back with a plan that doesn't work for you and one that doesn't work for us, but not one that shows the sign at 20 feet.

FRED LEBOW: Well, 20 feet would cross right on the window.

SLATER ANDERSON: Yes, well, but that's your choice that the 20 feet doesn't, you know, and that's fine. That's your prerogative.

FRED LEBOW: There's no way to really attach the sign -- I mean, the way these windows, they're all --

SLATER ANDERSON: You're the engineer.

FRED LEBOW: You want me to use my engineering skills. Let me tell you that sign would be very ugly and you have to span it to get to the ends. And you wouldn't be happy with the sign. If I wouldn't be happy with putting it up, you wouldn't be happy.

TIMOTHY HUGHES: Well, I'm not happy with that one either.

FRED LEBOW: Listen, you don't have to be in love with it. Just got to be sympathetic.

THOMAS SCOTT: I mean, I think if he had a door at the first floor level, like you said, if that was his door --

TIMOTHY HUGHES: Yes.

THOMAS SCOTT: -- I would be more inclined to push for it down low. But where

he doesn't, and you've got to go in the mall,
I just....

FRED LEBOW: It identifies where you
have to go. I mean, it's that simple.

SLATER ANDERSON: Well, you know,
what's not a --

BRENDAN SULLIVAN: To turn the tail
of the dragon to an arrow pointing to the
second floor.

TIMOTHY HUGHES: Slater, you were
saying something?

SLATER ANDERSON: What's not very
well illustrated on those drawings, though,
is that this difficult architectural feature
that we're trying to hang a sign on does jut
out from the building. It's not flush with
the Potbelly's below. So I think that
there's some --

FRED LEBOW: I'm sorry?

SLATER ANDERSON: It's an overhang.

TIMOTHY HUGHES: Yes, that's true.

SLATER ANDERSON: If you look at the picture, you're talking about affixing it to something which is distinctly part of the second floor, not something that appears to be --

TIMOTHY HUGHES: Right, they're not in the same plane is what he's saying.

SLATER ANDERSON: It's not in the same plane as the Potbelly's below.

FRED LEBOW: Oh, I see. I'm sorry. I'm sorry, yeah.

SLATER ANDERSON: To me it's saying this is the second floor, not the first floor.

TIMOTHY HUGHES: You know, thanks for pointing that out.

BRENDAN SULLIVAN: In reality that's a three-dimensional thing.

TIMOTHY HUGHES: Right. Actually, that makes the separation for me. And that furthers my resolve not to go for higher than 20 feet.

SLATER ANDERSON: And I think you could go up, like we say, if you were partially over the windows, partially over the frame below so you had something to mount on. You know, I feel like we got an unacceptable plan for you and an unacceptable plan for us, not sort of, you know, make it work solution.

FRED LEBOW: You know, I mean look it, the HealthWorks is across the street. You have approved signs. So this is a very difficult building. Blocking the windows, not blocking here architecturally just doesn't work right. It doesn't work well for the -- it just doesn't work well for the mall.

Like I said, we could move this down just over the window. What are we ten feet, eight feet, seven feet? Just slightly higher. We could do that if that would be a compromise for you people. I think that would work. You know, just put it down low and everybody -- I'm telling you everybody's going to be confused on where you're going in that building. It really -- if you really think about it, if you had a business here, that's where you'd want your sign. I mean, you've got to put yourself in the owner's place, where would you want the sign? Would it be acceptable on that second floor, you know, just over the sill? I don't think it would be.

TIMOTHY HUGHES: I think when I look at these two things together, that sign sitting over the sill and in that first bay

of windows there indicates that that's where the restaurant is, and that's good enough for me. And that can be done as a matter of right. You don't need a Variance to put that sign there.

Any other comments?

FRED LEBOW: I don't necessarily agree with that.

TIMOTHY HUGHES: I didn't think you would.

FRED LEBOW: No, I mean, just because it juts out, doesn't mean people are going to logically look at it and say oh, this is where we need to go. This is about five feet difference.

What happened if we just drop the sign just a little bit, like four and a half feet difference? I don't know what the big deal is.

TIMOTHY HUGHES: The big deal is that one of them requires a Variance and the other one doesn't.

FRED LEBOW: No, no, that's why we're coming here for relief. That's right. I'm just saying....

TIMOTHY HUGHES: Are we ready for a vote?

BRENDAN SULLIVAN: Yes.

TIMOTHY HUGHES: Because I'm not going to change my position the more we talk.

The Chair would move that a Variance be granted for the placement of a sign above 20 feet at 822 -- is that the address we're using? 822 Somerville Avenue.

A literal enforcement of the provision of the Ordinance would involve a substantial hardship, financial or otherwise, to the Petitioner for the following reason:

The Petitioner has not been able to lease space on the second floor without the directly related signage fronting the building.

This is a significant hardship to the mall.

The tenant space has no ground level entrance as per the sign requirements. All other sign requirements will be adhered to.

The hardship's owing to the following circumstances: Relating to the soil conditions, shape, and topography of such land. Or the structures and especially affecting such land or structures but not affecting generally the Zoning District in which it's located for the following reason:

The irregular shape of the structure and lack of ground level entrance as required for the signage requirements prevents direct

sign recognition to the second -- prevents direct sign recognition to the second floor tenant space.

Desirable relief may be granted without either substantial detriment to the public good, for the following reason:

It is critical for the retail space to be occupied and functional for the preservation of the mall and maintaining a thriving Porter Square area.

And relief may be granted without nullifying or substantially derogating from the intent or purpose of this Ordinance for the following reasons:

All of the signage and Zoning requirements will be conformed with.

All those in favor of granting the Variance?

(Show of hands.)

TIMOTHY HUGHES: That's two in favor.

(Green and Scott.)

TIMOTHY HUGHES: Opposed?

(Show of hands.)

TIMOTHY HUGHES: That's three opposed. It doesn't carry, sorry.

(Hughes, Sullivan, Anderson.)

TIMOTHY HUGHES: In the opinion of the opposing voters, the Petitioner has not met the statutory standard of hardship to make it possible to grant the Variance for the over 20 feet.

FRED LEBOW: Thank you.

* * * * *

(7:25 p.m.)

(Sitting Members Case #10502: Constantine

Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair is going to call case No. 10502, 286 Concord Avenue.

And before I ask the Petitioners to identify themselves, the parties who are sitting on this case and whom we believe sat on the case before, because this is a continued case heard, are the five you see up at the table right now: Mr. Sullivan, myself, Mr. Hughes, Ms. Green, and Mr. Scott. Unless you people have a different recollection or an objection?

DAVID FORD: Not for me.

CONSTANTINE ALEXANDER: Okay, with that out of the way, for the record, please identify yourselves.

ATTORNEY SUSAN ROBERTS: Good

evening, Mr. Chair, I'm Susan Roberts from Anderson and Kreiger representing AT&T. With me is David Ford from Centerline Communications. We also have with us tonight Deepak Rathore from AT&T who's here to be able to speak to you about radio frequency coverage issues. We also have an independent consultant with us, Don Haes, and he has his own firm, and if necessary, he would be able to speak about radio frequency emissions issues.

As you pointed out, this is a continued hearing from September 12, 2013. We filed our application on July 31, 2013. We're seeking a Special Permit to site wireless facility at 286 Concord Avenue. This is a residential building in a BA-1 District. When we were before you on September 12th, we had much discussion about the design of the

facility, and there were objections to the design of the facility for a number of reasons, and you asked us to go back to meet with planning staff and with Historical Commission staff again. We had done that previously, we did it again, on the site. And we have come up with a new design for you which we submitted this past week. And the new design if I might just take a brief moment to describe it, is reduced in size because we reduced the number of antennas at the site. So we have reduced the size of the enclosure so they are not so obtrusive.

CONSTANTINE ALEXANDER: What are the dimensions of the enclosure now?

DAVID FORD: So previously the dimensions --

CONSTANTINE ALEXANDER: No, I don't want now not previously. I want now.

DAVID FORD: Now they're ten by seven.

CONSTANTINE ALEXANDER: Ten feet?

DAVID FORD: By seven feet and six feet high.

CONSTANTINE ALEXANDER: And six feet high?

DAVID FORD: Correct. Before they were ten feet high. So we reduced them by almost four feet.

CONSTANTINE ALEXANDER: Okay.

DAVID FORD: And just so you're aware, looking through the photo simulations, photo A is the actual. Photo B is our first design we showed you, and photo C is our new design. So there's three views per each photo location. Four photo locations.

ATTORNEY SUSAN ROBERTS: And if I

might just continue to give a little summary of the hearing on the 12th. You had also asked us to meet with neighbors because Mr. Yang had come and presented a petition with some names on it representing people who had some interest, concerns, we weren't really sure, but had some concerns about the site. And so in response to your request, what we did was we sent a notice to all of the abutters and asked them if they would be interested in coming to a meeting which we held on the 10th of October. We held it here, upstairs in one of the conference rooms upstairs. And Mr. Yang came and another woman whose first name is Ellen, I'm not sure of her last name, but she was an abutter, I believe, and she also came. We also had with us Mr. Haes. And we had discussion about their concerns which included concerns about

radio frequency emissions and value -- property valuation.

So we're back, as I said, tonight. We are seeking your approval of the Special Permit upon our redesign, upon our listening to some of the neighbor interests. We understand that we haven't listened to all of the neighbor interests and we have not and did not reach out to everybody on the petition. We reached out to probably between 30 and 40 percent of the people who are on the petition, because they did get notices but did not come. And we are here to answer any questions, so here we go.

CONSTANTINE ALEXANDER: Okay.

I'm sorry, do you want to say something?

DAVID FORD: No, all set.

CONSTANTINE ALEXANDER: I'll start with some. The property right now is a

non-conforming structure in terms of height. It is 37 -- as it exists today, according to your dimensional form, 37 feet, 7 inches.

DAVID FORD: Correct.

CONSTANTINE ALEXANDER: 30 feet is the permitted height, the maximum height you can have under our Zoning Ordinance. You now want to put a six-foot structure on top of the 37 feet, 7 inch structure. That from a visual, not from a technical Zoning point of view, but from the visual impact statement, you have a 43, almost 44-foot building in an area that has no large buildings. It's an area that is large -- buildings that high as far as I can recall, and it is in an area that is largely residential. And so the impacts are significant.

Further, you're on a hill going down Concord. And you come from the Harvard

Square direction toward Alewife. So the impact, if you're coming up the hill, is even greater, visual impact, than 43 or 44 square feet. I have, I continue to have -- further, I should have complimented you on your efforts. I think you made a very valiant effort to do what you can. But if I can be perhaps crude, you're putting lipstick on a pig. Your problem is you still have a 44-foot structure. And it is just inconsistent, to me, I'm only one of five, terribly inconsistent with the neighborhood. It's not consistent with the prevailing uses in the area, and I still have a problem. Windows or no windows, with respect to the penthouse. I mean, it's now six feet rather than ten feet, it is still too big a structure, too out of place for the structure of this sort for me to support the petition.

Anyway, I'm probably, that's supposed to be a question. It's more of a statement but that's how I feel about this.

Other questions from members of the Board or comments at this point or should we go to public testimony?

BRENDAN SULLIVAN: I would conquer I think with a large part of what you said. And the photos, if you took a photo with your -- on the other side of Walden Street and you backed down the block oh, probably six or eight houses and was stuck at the traffic light back halfway down the block and looked toward and you see the structure on your right, and then you look across and you see all the triple deckers on the left, and I actually brought this with me, had it in the truck, and not this one but from the previous meeting, and had it there and I'm looking and

trying to figure out what it's going to look like. And it is very inconsistent with what is across the street.

CONSTANTINE ALEXANDER: Any other comments or should we open it public testimony?

TIMOTHY HUGHES: I would like to hear what the public has to say.

CONSTANTINE ALEXANDER: I'm going to open it public testimony. Is there anybody here who would like to be heard on this matter?

ELLEN GAGLIARDI: I'm a resident in the neighborhood.

CONSTANTINE ALEXANDER: You have to give your name and address to the stenographer.

ELLEN GAGLIARDI: My name, Ellen Gagliardi, G-a-g-l-i-a-r-d-i 279 Concord

Avenue and I'm severely in opposition to these cell towers. We had the opportunity to meet with these folks on October 10th. At that time I asked them the benefit to the neighborhood of having cell towers in a residential area. They informed me that the benefit was for better communications. We're a resident that has been in that home for over 73 years.

CONSTANTINE ALEXANDER: You don't look that old.

ELLEN GAGLIARDI: Not me personally but my aunt who owns the home is 73-years-old. We love the neighborhood. It's part of our life. People that live in that neighborhood, love that neighborhood. I have concerns on several areas.

One, the property value. I don't care what anybody says, nobody will buy homes near

cell towers. My second concern is, as you know, as you talked about the traffic earlier, very heavy traffic congested area. No matter what time you go it's difficult for residents to cross the street. Now we're going to go put cell towers and have construction in the middle of Concord Ave.? The safety of the construction of these cell towers also concerns me. And also, it's a little bit disheartening in how it was proposed to the neighborhood. I don't think the neighborhood was informed properly. They had a posting on a tree. They felt that that was adequate. And I'm concerned with AT&T just wanting to be in the neighborhood and how long is it gonna be before we have more cell towers at the next block? The bigger concern is that they are looking at health issues to children. There are four schools

within three blocks of this residence. So that's an issue. I know we can't contest it based off of health issues, but that is a concern so -- and I am strongly against it. And there are other residents. What I see is the only one benefitting from this is AT&T and the landlord. The landlord will get rent for these towers. Average rent runs about \$800. So if you have 9 or 12 towers, that's a good income. The comment was also made when we met with them that if their taxes went up, that AT&T would assume the increase of the responsibility of the taxes. What I want to know is the Zoning Board going to assume our tax increase since one resident will have it accommodated? So it takes away from the neighborhood. The neighborhood's a great neighborhood. The residents that live in that neighborhood, love that neighborhood

and it's a very friendly community. If we let AT&T in, it's going to be a matter of time before every house has cell towers on it. And I know that they are planning to put cell towers at 799 Concord Ave. So are we going to go every few feet and put cell towers along Concord Avenue? And is Concord Avenue the only street that's gonna allow cell towers?

So, thank you.

CONSTANTINE ALEXANDER: Thank you for taking the time to come down.

Anyone else wishing to be heard? I'll come to you. Go ahead, please.

KRISTEN MANN: My name is Kristen Mann. I live at 267 Concord Avenue. My concern, as Ellen said, is with the property values. Our property is our main financial cushion in our old age and I'm very concerned about what's going to happen if the value goes

down on this property. And the other thing is I read the notes from the last meeting, and it said that 26 other condo associations or businesses were asked if they wanted to have this on their building and they all denied it. And it seems to me that people who live and work in this neighborhood do not want, not just the residents who are here tonight, but other people do not want this kind of use of the building in their neighborhood. And the other thing is it's really ugly. So, I don't like the way it looks.

CONSTANTINE ALEXANDER: Thank you.

Ma'am, you wanted to speak. Please come forward so we can hear you and give your name and address to the stenographer.

PAMELA WATTS: My name is Pamela Watts. I own a business at 266 Concord Avenue called Reside. I'm opposed to this.

I think that there is absolutely no benefits to be gained for businesses or residences by having these cell towers go up. They're an eyesore. They're a health issue. They do not add any benefit whatsoever that I can determine for us via communication, added efficiency, anything. So I'm deeply opposed. I vote no and I'm a business.

CONSTANTINE ALEXANDER: Thank you.

Sir? Wait a minute, I know who you are. Are there any other neighbors? You'll have a chance to speak. Do you want to have a chance to speak first?

CAROL WEINHAUS: Yes. Thank you very much. And I also want to thank your staff that Maria was super nice when I found out about this. I only found out -- my name is Carol Weinhaus, W-e-i-n-h-a-u-s. And I live at 271 Concord Ave.

And so I'm relatively new to the neighborhood, but I already know a lot of the store owners. And I only found out because Ellen let us know. So unlike my other neighborhood that I lived in, there was no neighborhood association that could let us know. There is no real outreach beyond the abutters to this going on. And I only know because she put this in the mailbox. I have similar concerns, but I also wanted to say that I have -- I'm sorry, I don't know your name, but I thought your comments were on point. I took photographs with my cellphone. I'm sorry that they're in black and white, but basically --

CONSTANTINE ALEXANDER: I'll pass them down.

CAROL WEINHAUS: What I wanted to do -- I don't know that I brought enough to

be able to explain what the drawings are.
Can you all share them?

CONSTANTINE ALEXANDER: I'll share with Tim.

CAROL WEINHAUS: So basically what I did is the first page is this is a hill. So when you look at that, it's not giving -- it's looking like you're looking up, you're really looking down. I'm just doing the one block that I live on. So essentially you're looking down. This is like Reside -- I live across the street, and you can already see in the distance the building. You can see the roof.

And then as you go down through these pages, you can see how much you really can see of the roof. And you can also see the skyline that it just doesn't fit. And as you keep going down -- I didn't number the pages, but

basically you've got the row of triple deckers that I live in. And that even if you're not an abutter, I can certainly see not only from the front porch but from the third floor where I live, I look out my window and I can see the roof of the building. And so I think it's incredibly ugly and not keeping with the neighborhood and the windows, do not really add anything to it. And the other thing is that this is my nest egg, my financial cushion, and I'm really deeply concerned about the values of having bought something for the first time and then having the value go down.

And the other thing is, there was just very limited time to even see the photos. They were in on the 21st, so it's difficult. And I should tell you some of the other store owners told me they were against it but

they're not here tonight.

So thank you. Thank you.

CONSTANTINE ALEXANDER: Thank you for coming down.

Anyone else wishes to be heard? Yes, sir.

JOHN SANTINO: My name is John Santino. I live at 286 Concord, and I've been a tenant of Eric for six or seven years. And I find him to be a great landlord. And when I first heard about this, I was concerned like everyone else in the neighborhood was. I have poor cellphone connection in the whole neighborhood. I get -- every single time on I'm on the phone, it just stops, I have to dial again. And with the -- there's no more land lines, it's really cellphones. And here it's horrible for cellphones. And I kind of commend AT&T for wanting to do it there

because I would jump in a heartbeat. I've got Verizon now. My Verizon stops all the time. My cellphone stinks and I use my cellphone for my income.

Eric has done a lot to improve. Since I've lived there, there's been a lot of other things that have been going on and I don't think he's trying to hurt the neighborhood and different kinds of things. We had a long discussion. I researched it on-line. I'm not at all concerned about the radio activity and things like that. I'm more concerned about having my cellphone in my pocket. And that's all I have to say. And I think that, the neighborhood's got kind of like a really mixed kind of look to it, and I don't think anybody would really see it if you -- I ride my bike there all the time, and it's really difficult to focus on that particular piece

of property and say it's going to damage the neighborhood in my opinion.

CONSTANTINE ALEXANDER: Thank you.
Thank you.

DEANNE SWEENEY: Hi, my name is Deanne Sweeney. I live at 279 Concord, No. 3. Pretty much directly across the street. And this was brought to my attention last week and I'm somebody who also rides my bike in the neighborhood. And today when I was standing there at the bus stop right there in front of the dog salon at that building it's already large. And all I could imagine is more on top of there and it was really disheartening. I have Sprint. I have no problems with cell connection. I also have Clear.com which is a wireless internet provider. No problem. I don't have dropped calls. I don't know where the communication thing -- but it would

be an eyesore. I live on the third floor with beautiful sunsets and I really, another six feet on top of that building is really scary.

Thank you.

CONSTANTINE ALEXANDER: Thank you. Sir, I didn't let you speak. Now, do you want to speak?

ERIC HOGLAND: Yeah, my name is Eric Hogland and I'm a property owner of 286 Concord Ave. I'm here also to be a face to the landlord. I feel like these petitions and the person who owns the building isn't here. I think it's important to be that face to it. Just a couple of administrative things. I don't know whether this matters or not, but I don't think you were here the last time we had this meeting. I'm not trying to object. I don't think you were here. I just have a good memory on those things. I don't

know if that helps or hurts but just to provide. You asked if we had comments.

I felt that at the last meeting the No. 1 concern bar none was health issues. I wouldn't do this if I thought there was a health issue. I asked AT&T to bring in an expert and they spent at their expense. They had a meeting. You know, no one came to that meeting to go over the health issues. I've spent time looking to it. I wouldn't put it on my building if I thought it would cause health issues. And I had these direct conversations with my tenants myself. And in terms of, I heard people talking about property values, and it -- connectivity is a value to a neighborhood. I grew up in rural New Hampshire, there's no connectivity. The value goes down. I can guarantee you that. I know it's daunting to hear about a cell

tower. If I heard about a cell tower and I wasn't given notice, I didn't hear about it, I would be very anxious about it. I feel like we're trying to go through this process in an intelligent manner and address these issues, and each issue -- I feel the health issue was addressed -- I feel the health issues was addressed. I think the design is getting better. I don't know if it's ever going to be perfect or if it's going satisfactory, but I feel like there's an evolution that it's getting better to it. And I think that it's important for the public to realize that we used to have land lines and now we have cellphones, and there has to be a chain from getting your -- if you want to have access to the internet, that's a positive thing. And you're not gonna get it from your land line down the road. You're gonna get it from your

cellphone more than likely, and that's a benefit to our community. And I know it's daunting, but I think it's important to work through this process in intelligent rational manner.

CONSTANTINE ALEXANDER: Thank you.

ERIC HOGLAND: And thank you for your time.

HARVEY LIPSKY: My name is Harvey Lipsky. I live at 267 Concord Avenue. Not exactly across the street but across the street from this property. My -- I object because the threat to property values. I know that -- I've read the transcript of the previous meeting, and I know there was a lot of discussion of the merits or demerits of the design. I've seen the simulations of the new design. I don't like the design, but more than that, I want to say it's not believable.

The people who come to our neighborhood for open houses and things to look at the properties for sale are very tech savvy people. They're knowledgeable people. They know about architecture and neighborhoods. Nobody is gonna buy that. And unfortunately that may not be all that they're not gonna buy. So I would like to object to the whole idea that we could erect these two out buildings on the roof, and if they're nice enough, the problem will be solved. We're talking about the wrong angle here. The other thought I have, I don't want to open this up in too many different plains, but it's really quite widely known today that and not every situation requires farms of towers, whether hidden or not hidden, that -- in fact, one of the things that was brought up briefly in the last meeting I

recall that someone said, why does it have to be on one roof, and why can't it be on more than one roof? And nobody disagreed that that is a possibility. Most of us probably know that these things can be very, very highly distributed at some cost but it can be done. And this is obviously what is more appropriate for residential area. Those are my thoughts.

CONSTANTINE ALEXANDER: Thank you for taking the time to come down.

Anyone else wishing to be heard? You, sir? You spoke the last time I thought you might want to speak again.

LEE CHAN YANG: My name is Lee Chan Yang, Y-a-n-g. And I live at 294 Concord Avenue next to Eric. I really wish Eric can be the very best neighborhood membership and he shouldn't have this idea. It doesn't

matter if it's from AT&T. And I think Eric should reject this. I think that's one thing.

And another thing is I just heard about the, they have a summary about radio safety or something, we never heard about this.

CONSTANTINE ALEXANDER: I think what they were saying was that one of the issues before us would be the need for some sort of facility on this roof or in that area for purposes of making their telecommunications effective, and that's what they have someone here for who can testify to that.

LEE CHAN YANG: Nobody show up. We just want to -- we don't know that situation.

And another thing is I think from the couple speak out is from neighborhood and some from the tenant, I think I just recently

heard one word, he said interest, conflicts. Be aware of that because we are not interest in conflicts but for somebody else in this field. So just that.

Okay, thank you.

CONSTANTINE ALEXANDER: Thank you. Thank you, sir.

Anyone else wishing to be heard? You spoke already. Is there something you wanted to add? Again, I'm sorry, you'll have to come forward and make sure the stenographer knows again who here.

PAMELA WATTS: Pamela Watts from Reside, 266 Concord. Do these towers emit noise of any kind?

DAVID FORD: No, they do not.

PAMELA WATTS: The frequency, low frequency noises of any kind?

CONSTANTINE ALEXANDER: No. That

has been the testimony consistently by all the telecommunications carriers who come before us that there is no noise.

PAMELA WATTS: Just a question, and I'm sorry, I was in late. How tall is the tower?

DAVID FORD: It's a penthouse but six feet high right now.

CONSTANTINE ALEXANDER: Six feet high. Ten feet by seven feet by six feet high. This is on top of the roof, sitting on top of the roof.

You spoke. I want to try not to have people speak again.

ELLEN GAGLIARDI: Ellen Gagliardi, G-a-g-l-i-a-r-d-i. I did ask for a copy of the report of the complaints and did not receive that when I went to the general meeting. And I thought that that's

something --

CONSTANTINE ALEXANDER: What type of complaints?

ELLEN GAGLIARDI: They said that they would give me -- I asked -- when I asked what the benefit was to the neighborhood, they said they've gotten complaints. And I said can we get a copy of the complaints. And I was informed that they would send that to me and they did not.

CONSTANTINE ALEXANDER: Okay, thank you.

I saw someone else's hand up again.
Yes.

CAROL WEINHAUS: I just had a question. Are the generators on the roof?

DAVID FORD: There's no generator.

CONSTANTINE ALEXANDER: There's no generators. They're just antennas.

CAROL WEINHAUS: Because I think said you could have generators on the roof or the basement.

DAVID FORD: No generators on the site.

CONSTANTINE ALEXANDER: Basically think of it as an antenna. Not the old TV antennas, it's not that of course, but just an antenna, passive structure on the building. No noise. Very little maintenance in terms nobody -- once a day someone's got to climb to the roof and do work on them.

BRENDAN SULLIVAN: Are there condensers on the roof?

DAVID FORD: Yes.

CONSTANTINE ALEXANDER: One condenser.

I'm going to close public testimony.

I will state that there is no written correspondence in the file other than the petition that was submitted in opposition that was submitted with respect to the previous proposal made by AT&T. As far as I can tell, there have been no written commentary on what is now before us.

So, that's the sum and substance of the public testimony and what's in our files. Before I give you a chance for your final statement, let me make a few observations. One is I think I said it too quickly before and I want to say it with more detail now. I want to commend you for listening to us at the last meeting, for attempting to revise the plans, and attempting to respond to our comments and to reaching out to the neighborhood. You did do what we asked you to do.

I also, despite one person has said, thinks you did a good job with the sign. We've had a problem with AT&T and their posting of signs, not here, but here and elsewhere. This time it was very prominent, maintained, and I thought that was excellent. That's No. 1.

No. 2, with respect to health issues it's been alluded to, the Federal Government has decided that there are no health issues related to telecommunications antennas and electromagnetic waves or whatever waves are set forth. And so communities cannot turn down or prevent the location of these towers based on alleged health risks to the community. So that issue is not before us. We take -- we have no right to get into this. The Federal Government has spoken. And so as of today at least, there is to be no -- to be

considered no health issues relating to what the Petitioners want to do.

And the last statement is in today's, I think it's today's Cambridge Chronicle, I saw the City Council has taken up this issue about telecommunications carriers and has decided that there's too much of a proliferation of them in the community and have asked that -- basically looking into whether to suspend allowing any more telecommunication carrier antennas on rooftops. So this is a matter before the community. It's not just Concord Avenue. This has become a matter of a community concern at least as expressed by the City Council and you should be aware of that. It has an impact on me in terms of I know that this issue resonates beyond 286 Concord Avenue.

Those are the things I wanted to get on the record. Now I'll let you have your final comments.

ATTORNEY SUSAN ROBERTS: So, we very much are interested in obtaining a Special Permit for this site. As I've mentioned before and as David has mentioned before, we've looked around this area of town in order to address our customer's coverage needs so that they can in fact use their cellphones, which everyone needs to do. We have investigated 13 other sites in the area, and David's prepared to tell you the kinds of sites that we looked at; residential, commercial. A number of residential buildings that have been investigated were condo associations and were unable to come to an agreement about a lease. This is the only site that works from a radio coverage

standpoint and which had a willing landlord. Someone that was willing to enter into a lease with us.

CONSTANTINE ALEXANDER: Can I -- I don't mean to interrupt you. I just want to stop you at that point. You said you've spoken to other condominium associations and were unable to reach an agreement. Is that because you could not reach terms, commercial terms or they just didn't want to talk to you?

DAVID FORD: No, no. Just flat out no.

CONSTANTINE ALEXANDER: Okay. Just didn't want to talk to you.

DAVID FORD: Just not interested in the project period.

CONSTANTINE ALEXANDER: Okay, just wanted to be clear.

ATTORNEY SUSAN ROBERTS: David went

to these meetings and so forth.

So that is sort of the reason why we want to try to very hard to make this site work. On the other hand, we're very sensitive to your concerns about the visual aspects, and especially where this is on a hill and so forth and I understand, you know, this is a concern. I'm also aware of the City Council's activity where it has proposed to think about, you know, what's happening in residential area. This, you know, again this is not a residential district. I want to remind everyone that it's not. Which isn't to say that there aren't residents who live there and that we shouldn't be mindful and sensitive to their concerns, which AT&T definitely is.

In the event that there aren't enough votes and I'm not sure, we haven't heard

enough from the Board tonight in my view to hear what others think, I understand how you feel. I'd like to hear more about how the Board feels in terms of design, and then to perhaps caucus a bit with the other members of the AT&T team to see whether this site would work in any shape -- way, shape, or form before we give up the ghost here as I said because it's been so hard. And we do want to provide coverage for our customers who rely on this for their businesses, for their education, for their emergencies, and so forth. So we know how important, you know, an issue it is.

CONSTANTINE ALEXANDER: We'll grant you that courtesy after people speak and you have a sense perhaps of how we're going, we would be happen to recess the meeting and allow you to talk.

DAVID FORD: A major side real quick. It was your concern as well as many of the communities that these, you know, two faux penthouses if you would don't exactly fit with the roof line. We talked about sunsets, etcetera, especially to what you alluded to. Just noticing the, you know, the characteristics of the neighborhood as well. There's very many prominent chimneys on this rooftop, surrounding rooftops. Flip through the photo simulations, you see a handful five plus chimneys. This is just one design option, not to say that we cannot change to the chimney option that Brookline Street had. That was totally an option. This was just our next try. Not to say we can't revert back to a chimney option which we have not shown you on this rooftop yet. Just going off that. And I think the chimney

option to you, the Board, and the characteristics of the neighborhood.

CONSTANTINE ALEXANDER: Why didn't you propose a chimney option this time?

DAVID FORD: Because usually chimney options go with buildings that have brick facade and this does not. So that's typically --

CONSTANTINE ALEXANDER: You thought a penthouse of this size you're proposing --

DAVID FORD: Correct.

CONSTANTINE ALEXANDER: -- sitting on top of a three decker typically have flat roofs and not much more would be better?

DAVID FORD: Simply because you can match the facade of the bidding. Brookline Street, as you recall, was a brick building.

CONSTANTINE ALEXANDER: I recall.

DAVID FORD: So it is an option.

CONSTANTINE ALEXANDER: Okay, thank you.

I'm sorry, do you want to speak again?

ATTORNEY SUSAN ROBERTS: Yeah, I wanted to hear whether anyone else --

CONSTANTINE ALEXANDER: You will hear.

ATTORNEY SUSAN ROBERTS: Okay. Had issues. And I'm very appreciative of the height issue. And from the height I gather it's a question of sort of bulk in general.

DAVID FORD: Just to call out, rooftop facilities are not uncommon on Concord Ave. There's one existing at 443 Concord Ave., as well as one at 100 Concord Ave. So they are --

CONSTANTINE ALEXANDER: This is 286.

DAVID FORD: Correct. This is

smack dab in between.

CONSTANTINE ALEXANDER: Okay, thank you.

The petitioners are begging for comments from other members of the Board. I've said my piece. Brendan to some extent has said his piece. Any comments?

TIMOTHY HUGHES: I have a couple of comments but they're not necessarily real compelling to this specific case, although I appreciate the idea that you would entertain another design with a chimney. I would think that obviously you picked this building because it's the tallest one in the area. You people have got to start thinking about engineering that doesn't require height if you're going to reach these neighborhoods that don't have anything tall, you know? And I think the other thing you're gonna have to

stop doing is competing with antennas of your competitors. You're going to have to start sharing antennas on top of buildings especially if the City Council does what they say they're going to do. And so, because there's just so much concern in this area, it's really tough for me to go with this, you know.

DAVID FORD: It's just to promulgating on a roof of an existing carrier is always our first option. So that was always, like I said, the first option to look at, 443 and 100 Concord Ave. as well as 249 Walden Street for all existing sites.

TIMOTHY HUGHES: You know, there was a time when every one that went up, there was these faux chimneys and they were ugly and they didn't look like anything. And the push back from the boards like ours are why things are

changing. We're changing in terms of stealth, we're getting a little better with stealth. But somebody's got to start changing the engineering of these things. I mean, somebody's got to figure out a way. You can get cell coverage in a subway train, you know, and that's not height. That doesn't require height. You're gonna start -- the companies are going to have to start thinking about other ways to do this. We can't keep saturating every building with antennas. That Norfolk Street one that I can see out of my kitchen window is a good example of how, you know, this is getting out of hand. It's just getting out of hand.

ATTORNEY SUSAN ROBERTS: If I might have Deepak Rathore who can address coverage issues and sort of explain what we're looking for, what kind of technology is available,

what kind of height is necessary, what was studied here so that the Board has a better understanding, I appreciate that, you know, boards like Cambridge definitely do push us to, you know, do a better job, but we can't always like reinvent the technology within a matter of months which is what we want to happen, so we kind of have to work with what we have. And Deepak knows what we have.

TIMOTHY HUGHES: But my point is you can't do it on a matter of months. My point is if you don't get pushed on it, you're not going to do it at all. These companies are not going to rethink the engineering. They're not going to rethink how to accomplish this without the proliferation of multi-company antennas on tops of buildings, you know?

ATTORNEY SUSAN ROBERTS: So that is

being done. And I would love to have you hear from Deepak Rathore at AT&T.

BRENDAN SULLIVAN: I think it's an exercise, and I appreciate --

TIMOTHY HUGHES: I don't think it's necessary in juncture --

BRENDAN SULLIVAN: -- it's an exercise in futility. As far as I'm concerned, the issue before us is this particular installation on this particular building and this particular design which I oppose.

CONSTANTINE ALEXANDER: You already heard. I'm not going to cut you off, Janet or Tom, if you want to speak.

JANET GREEN: I wanted to hear, and you mentioned where the other, where the other towers are in the neighborhood around in there and I don't remember why you didn't

go there.

DAVID FORD: Because they're just too close to existing sites.

JANET GREEN: They're too --

ATTORNEY SUSAN ROBERTS: So we have --

DAVID FORD: I can give you a map if you want. But basically the existing sites on Concord Ave. are too close to further sites AT&T already has in existence. So picking a site, for instance, 100 Concord Ave., we would be going within a quarter of a mile of a site that's already existing. So that area is already covered. We're trying to cover the other area further down Concord Ave. So that's the reason why we can't go --

JANET GREEN: So that's why?

DAVID FORD: Right.

JANET GREEN: So what you're doing

is you're coming into a place where there are no other cell towers now?

DAVID FORD: Not necessarily. No other cell towers for AT&T to co-locate on.

JANET GREEN: So there are no other cell towers in the area that you're looking right now from other carriers?

DAVID FORD: The closest one is four blocks, five blocks away.

CONSTANTINE ALEXANDER: Tom, it's up to you if you want to speak.

THOMAS SCOTT: Yes, no, my feeling is the neighborhood is predominantly residential. I understand that Concord Ave. has a lot of commercial, but you know, the majority of buildings down Concord Avenue are residential buildings. A lot of them are triple deckers. This object on top of a triple decker is very foreign. I would be

much more agreeable to a stealth chimney structure I think than this, these structures -- especially where there's two of them. There are so many antennas on this roof, I think there's, is there nine?

ATTORNEY SUSAN ROBERTS: Nine.

THOMAS SCOTT: There's nine? I'm not quite sure why there have to be so many. We've done other installations or have seen other installations with many fewer antennas. So I'm wondering why does this one have to be so intense. You want to respond to that?

ATTORNEY SUSAN ROBERTS: Generally if I could and Deepak could do a job as well. We do try and think of the future. We don't want to have to come back here and ask you to add an antenna because we want to keep up with our technology, obviously over the past few

years, even since I've been doing this, which hasn't been all that long, you know, we've gone from, you know, voice and text to data and data's huge. Everyone relies on their cellphones to be able to get, to be able to get coverage and to transact and live daily lives. So, it's that -- for that reason we wanted to try and site nine which is a reduction for us. Most of our sites these days we're asking for 12. So that's which -- that's the reason for the nine.

Would you like to speak on this?

DEEPAK RATHORE: My name is Deepak Rathore. I'm with AT&T --

CONSTANTINE ALEXANDER: Speak up so the neighbors can hear you as well.

DEEPAK RATHORE: Oh, okay.

So main reason we are -- when we are

going three or four antenna per sector is basically we have to maintain GSN, we, have to maintain all the different technology that we are deploying. And to get the complete spectrum used we have to have separate antenna for all of these different technology that we can get maximum user of, and all the inspect that we can use and that's the reason. And then there's -- we are operating on the same band different technologies so we really can't combine them into one antenna. It has to be separate otherwise it's going to cause interference within the system and everyone would be affected.

THOMAS SCOTT: But we approved a similar installation, I think, on the Masse building not that long ago, and I know it was far fewer antennas and the structures were much, much smaller and they were made to look

like chimneys and --

DAVID FORD: Right.

THOMAS SCOTT: -- and if you would drive by there today, you don't even notice them.

DAVID FORD: Just because, I mean, we try to get 12 per property or per site doesn't mean you can't go fewer. For instance, if you recall the Brookline Street site had six antennas. That's why we allowed two per chimney. So this site could -- we have to go back and redesign and talk with Deepak and talk about the technology. But it is possible to further reduce count. We started at 12, we're down to nine. It would be possible to further reduce the six or three to the faux chimney design that you mentioned as well. Which may, like I said, match the characteristics of the neighborhoods because

chimneys do predominate in the surroundings buildings.

CONSTANTINE ALEXANDER: What I'm hearing is you want more time to redesign?

ATTORNEY SUSAN ROBERTS: More time to redesign.

CONSTANTINE ALEXANDER: I'm going to tell you I receive that with a great deal of reluctance. We told you to come back and redesign. We had all these neighbors come down here. And now to drag them down one more time for your third try at designing this property? That's a bit much. This was your chance. If you thought -- you heard us. You heard we didn't like the penthouse the last time. You came back with a penthouse. You put windows on it, you shrunk it a little bit. I'm going to vote against continuing this case. I think we should put it to rest

tonight one way or another, but I'll put it to a vote. If you want -- your request is to continue this case?

ATTORNEY SUSAN ROBERTS: That would be our request because we feel that it's worth for everyone to come up with a design that's pleasing. And if you want, we would be happy to have another meeting with the neighborhood to share the design, understanding that everyone is still opposed. But I know a number of neighbors tonight said that they didn't have enough time to look at the design and so forth, so we could do a better job and actually hold the meeting in the neighborhood itself as opposed to here in the senior center which was our idea to do it that way. But we could, if Mr. Yang wants we could hold it in the coffee shop or wherever that's convenient, but try and work more with the

design since that seems to be the overriding issue. And, you know, just force our A&E guys and girls to come up with something else that's more pleasing for you.

CONSTANTINE ALEXANDER: When would you -- first of all, what's the earliest time we can hear the case if we continue this as case heard. We need all five of us, even Janet I guess.

MARIA PACHECO: Well, November 14th we already have four continueds.

CONSTANTINE ALEXANDER: Okay.

MARIA PACHECO: And the 12/5 and 12/19 we have three each night.

CONSTANTINE ALEXANDER: What's the first one in January?

MARIA PACHECO: January 9th.

DAVID FORD: That allows us enough time to go back and meet with the community

and show them the new design.

CONSTANTINE ALEXANDER: Now, let me ask the neighbors and I can't one by one, is there any opposition to the notion of coming -- hearing this case again apparently with a new design on January 9th?

DEANNE SWEENEY: Deanne Sweeney, Concord Ave. My opposition, you mentioned also the building is already higher than the area that it's supposed to be in. It's already a triple decker, we're talking about something that's higher than the triple deckers. Even with chimneys it just doesn't work with the building. It doesn't work with the neighborhood. It's still --

CONSTANTINE ALEXANDER: I don't want to get into the merits. The question was whether is it too inconvenient to come back in January? If you want to come back,

you can express your views in writing.

ELLEN GAGLIARDI: I think January is a more difficult time with the weather being bad. It's a burden of our neighbors that are working all day. Can we move the meeting to the neighborhood?

ATTORNEY SUSAN ROBERTS: We offered to that do.

ELLEN GAGLIARDI: The Zoning?

CONSTANTINE ALEXANDER: Our meeting will stay here.

ELLEN GAGLIARDI: That's what I'm saying. I'm in opposition of coming back.

CONSTANTINE ALEXANDER: All right. I'm going to take a vote. We'll see how the vote goes with the members of the Board.

JANET GREEN: Gus, just to understand one thing first, and it had to do with the number of cell towers that were going

to be on the roof. Were you discussing the possibility of having fewer of those?

DAVID FORD: Correct.

ATTORNEY SUSAN ROBERTS: Fewer antennas?

JANET GREEN: Fewer antennas.

DAVID FORD: Correct. We started at 12 last time. Dropped to nine this time to allow for a smaller penthouse.

JANET GREEN: Right.

DAVID FORD: If we further dropped, it would allow us to get it down to chimneys.

JANET GREEN: Okay.

CONSTANTINE ALEXANDER: Okay. The Chair moves that this case be continued until seven p.m. on January 9th. This being a case heard. On the condition that the Petitioner, first of all, between now and January 9th, meet again, reach out, in other

words, communicate with the neighbors with respect to what would be a new set of plans. And that the sign that's on the property, it can be taken down now, but it has to be reposted and maintained for the statutory period before January 9th reflecting a new date, January 9th, and the same time as tonight, seven p.m.

And to the extent that you have new plans, they have to be in our files no later than five p.m. on the Monday before January 9th.

And this is for the benefit of the neighbors, if you want to come down and see what plans they have, starting after five p.m. on the Monday before January 9th, they would be in our files, open to the public. So you don't have to read them or see them here. Hopefully you'll hear about them if they do

have their meeting with the neighborhood, assuming this case is continued.

Okay.

On the basis of this motion, all those in favor of continuing the case until January 9th, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Three in favor.

(Hughes, Scott, Green.)

CONSTANTINE ALEXANDER: Two opposed.

(Alexander, Sullivan.)

CONSTANTINE ALEXANDER: This motion requires a simple majority. The motion has passed. We will see you on January 9th at seven p.m.

DAVID FORD: Thank you.

ATTORNEY SUSAN ROBERTS: Thank you.

* * * * *

(8:20 p.m.)

(Sitting Members Case #10466: Constantine

Alexander, Brendan Sullivan, Thomas Scott, Douglas Myers, Slater W. Anderson.)

CONSTANTINE ALEXANDER: The Chair calls case No. 10466, 640 Memorial Drive.

Is there anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard.

The Chair would report that we are in receipt of a letter from a Dan Winny, architect, who is actually the Petitioner in this case, or at least the person who signed the petition.

(Reading) On behalf of Sanofi Pharmaceuticals -- excuse me, the tenant at 640 Memorial Drive, I am writing as the applicant to request the withdrawal of the Variance application for signage on the

facade facing the Charles River. Sanofi no longer proposed to install any sign on the river facade of the building.

The case had been continued to the Board's scheduled meeting on October 24th, which is tonight. We appreciate your consideration of this matter and understand from staff that we do not -- that we will not need to attend the October 24th meeting.

In the background I could hear very loud huzzahs from many of the people in the community who were not in favor of this matter.

Anyway, I move that we accept the request of the Petitioner to withdraw this petition.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in

favor. Case withdrawn.

(Alexander, Hughes, Sullivan,
Scott, Myers, Anderson.)

* * * * *

(8:20 p.m.)

(Sitting Members Case #10519: Constantine

Alexander, Brendan Sullivan, Thomas Scott, Douglas Myers, Slater Anderson.)

CONSTANTINE ALEXANDER: We'll now turn to our regular agenda, and the Chair will call case No. 10519, 222 Brattle Street also known as 220R Brattle Street.

Is there anyone here wishing to be heard in this matter?

ATTORNEY EDWARD RABINOVITZ: I have documents.

CONSTANTINE ALEXANDER: These are copies of the Variance that was granted in 2010?

ATTORNEY EDWARD RABINOVITZ: These are various copies of the exhibits to the appeal, they are A through L I believe. Here are additional copies of the supporting statement.

CONSTANTINE ALEXANDER: These are

the exhibits of the supporting statement?

ATTORNEY EDWARD RABINOVITZ: Yes. Some of the exhibits. Just the important ones. I didn't want to burden you with too many documents.

I'm Edward Rabinovitz and I'm counsel for the Petitioners Jil-Anne Bailey and David Teller.

In addition, there's some duplicates of pictures which I think will be very helpful in this matter.

CONSTANTINE ALEXANDER: Are these in our file now?

ATTORNEY EDWARD RABINOVITZ: I'm sorry.

CONSTANTINE ALEXANDER: Are these in our file now?

ATTORNEY EDWARD RABINOVITZ: Yes, these are exhibits. They're marked --

CONSTANTINE ALEXANDER: Did you file them before?

ATTORNEY EDWARD RABINOVITZ: Yes, yes, yes.

CONSTANTINE ALEXANDER: Some of us may have seen them before others may not.

ATTORNEY EDWARD RABINOVITZ: Yes. Those are G3 and G4 of Exhibits 1 through 4 that were previously filed with the appeal in this matter.

In addition I have copies --

CONSTANTINE ALEXANDER: Now what do you have copies of?

ATTORNEY EDWARD RABINOVITZ: I'm sorry. I have copies of a report from an arborist with attached pictures as well. And those will be --

CONSTANTINE ALEXANDER: Excuse me, I'm not even going to look -- this arborist,

does this relate to the agreement that you've signed, the private agreement which is issues of claims of breach?

ATTORNEY EDWARD RABINOVITZ: This relates to the condition of the trees that we say were there at the time the agreement and this Board previously issued your decision. That is to say -- well, let me -- I'm not sure what the Board's familiarity is. The historical background of this, this is an appeal from a decision by the Commissioner.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY EDWARD RABINOVITZ: Who has determined that the owners of 222 Brattle Street can pave and park on an area back from the street at the end of the driveway.

CONSTANTINE ALEXANDER: Right.

ATTORNEY EDWARD RABINOVITZ: This, this arises out of a Petition for Variance

that they had issued. And these will, these drawings will be helpful I think just so what we're talking about.

CONSTANTINE ALEXANDER: I'm trying to understand the relevance of this arborist report.

ATTORNEY EDWARD RABINOVITZ:

Because what's happened is the owners of 222 Mount Auburn say that these trees were simply little bushes that in fact did not impede their ability to park on that very area of the driveway back in 2010 when you issued your decision. Your decision in 2010 said they shall not pave or park in any area that they were not parked or paved -- that was not parking at the time of the 2010 decision, and they shall not pave over any area that they were not parking in at the time of the 2010 decision. So the question is where were they

parking then and what was paved then? And we believe that the evidence will show not only that this was not paved and not -- and they were not parking there, but there were trees actually there which they have -- subsequently had removed contrary to an agreement that they reached with us.

CONSTANTINE ALEXANDER: Stop, stop, stop. Any agreement you have and if it's been breached, you have your remedies for breach of contract in a court of law. I'm going to make that statement before you started bombarding us with documents. Whether that agreement has been breached, it may have been, that's not before us. That's not an issue. I don't want to hear anything about it.

ATTORNEY EDWARD RABINOVITZ: I understand. All right? What I was only

suggesting is that this Board often has people appear before it in regard to contested matters. And in the course of those appearances people work out agreements. And in fact this Board incorporates those agreements.

CONSTANTINE ALEXANDER: No. Stop right there. That's not true.

ATTORNEY EDWARD RABINOVITZ: Okay.

CONSTANTINE ALEXANDER: This Board has a policy at least since I've been Chairman of not incorporating private agreements in our decisions because of the problems that arise from an enforcement point of view. So take that off the table, please.

ATTORNEY EDWARD RABINOVITZ: Let me retract that statement. What I would suggest is the exhibit will show is that there are a number of people who opposed the

Variance in 2010 because of runoff, because there was too much impervious surfaces, and there was -- there were aesthetic considerations, noise considerations, and view considerations. Because of that this Board incorporated in its decision restrictions on the owners of 222 Mount Auburn as to what they could pave --

CONSTANTINE ALEXANDER: That's true.

ATTORNEY EDWARD RABINOVITZ: All right? And where they could park. All right? That is a direct reflection of the complaints that were received by the Board from the neighbors, and which were incorporated into the agreement. That's all I wanted to raise. I'm certainly not asking this Board to enforce that agreement.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY EDWARD RABINOVITZ: All right?

I am not sure whether these made it into the file or not that the Commissioner looked at. They were sent to the Commissioner and they are, they have pictures of the conditions at the property which reflect both the conditions at the time in 2010 and subsequently.

This all revolves around the right to park two cars in tandem at the end of the driveway shown on the plan that I've given you which are marked in pink. Those two spots right there.

What the Petitioners are looking for -- I'm sorry, I have another one.

CONSTANTINE ALEXANDER: That's okay.

SLATER ANDERSON: I'll take one.

ATTORNEY EDWARD RABINOVITZ: What the Petitioners originally sought was the right to expand their building, and they sought a Variance for that. And I'm sure as the Board knows, granting a Variance is not something that you look on --

CONSTANTINE ALEXANDER: We agree.

ATTORNEY EDWARD

RABINOVITZ: -- easily.

So in order to get the agreement to the neighbors, they made certain concessions and agreements. One of them was which they would not pave or park in an area that they weren't, at the time of your decision, parking at and at the time of your decision was not paved. That's the simple issue here. If you look at the plan, this isn't our plan, this is the plan that they submitted, the owners of 222 Mount Auburn submitted.

CONSTANTINE ALEXANDER: Did you show these plans to Mr. Singanayagam who said --

ATTORNEY EDWARD RABINOVITZ: We showed the plans. I showed pictures. I personally visited with the Commissioner.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY EDWARD RABINOVITZ: There was a letter, it's an exhibit in the file that I sent to him on July 3rd. It's Exhibit K. There's a letter that Teller and Bailey sent with these 10 pictures that I just gave you dated 6/18/13.

DAVID TELLER: So we met with him and gave him the letter.

ATTORNEY EDWARD RABINOVITZ: They hand delivered the letter. This plan was submitted by the Petitioners of 222 Mount Auburn -- I'm sorry, Brattle. I keep saying

Mount Auburn. This was submitted by their surveyor and engineer, and you'll see depicted on it, and we've put in pink, the two trees, six-inch trunk and an eight-inch trunk which is exactly in place of where the area is that they now seek to park.

The decision that you issued, excerpts of which I've handed out again, but is also an exhibit in 2010, so Exhibit D, specifically said that they agreed that they will not park anywhere where they hadn't been parking previous to this. Forgetting all the rules and regulations, there is an immutable law of physics, two things cannot exist in the same place at the same time. Those trees existed at that time when they submitted their request for a Variance in 2010. They existed after that up until 2012, I believe, when somebody, and I'm not

accusing them of taking it because I don't know that they took them down, somebody removed those two trees from that spot.

So, what we have is your decision. Procedurally what happened is they came in earlier seeking a clarification of that Variance and this Board said, no, we can't clarify the Variance, it is what it is. Go to the Commissioner and have the Commissioner decide whether in fact you can park there.

CONSTANTINE ALEXANDER: Right.

ATTORNEY EDWARD RABINOVITZ: Well, they did. They sent a letter to the Commissioner, and it's Exhibit I to my -- our appeal, dated 6/24/13 in which Mr. Bram asked for permission to pave and to park there. That letter specifically says that they wanted to lay -- and their original 2013 application to this Board said they want to

reestablish parking. They want to lay paver along the section that has over the years become degraded and overgrown as a result of this use. Over the years the experts' testimony, which I've already submitted to you, said these trees were 10 to 20 years old. As you can see from the pictures, they were 20 or 30 feet high. These aren't bushes. This isn't overgrown. These are trees that grew there and the expert believes in fact that they were planted there. They just don't grow willy-nilly by themselves.

Paragraph B of the 2013 BZA application said that they were going to park five feet from the lot line. In fact, if you'll see what they plan to do, they plan to park right up to the fence at the lot line. But that's really not relevant to what we're talking about. His letter of 6/24 to the

Commissioner says that he wants to do a 10-by-10 foot area to lay paving stones. That's the request that was made in June of this year on behalf of the owners of this property. It is not now existing as terms of paving. They want to now pave it. They want to now park there. The original application that they filed back in May said it was an eight-by-eight foot barrier. It's now up to 10-by-10. It says on page 2 of Mr. Bram's 6/24 letter, second paragraph. Some scrub trees had grown up through the degraded pavement over the years prior to 2010. Those scrub trees are those 20 to 30 foot high trees that are depicted in these pictures.

CONSTANTINE ALEXANDER: The issue before us tonight, of course, as you recognize is an appeal for Mr. Singanayagam's decision. In his

decision, which is dated August 1st. Of course you have a copy of it. And he'll have a chance to speak. He's sitting right here if he wishes to. He points out that the condition that we imposed in 2010 when we granted the Variance -- and I'm going to paraphrase, that's not the exact language in our decision, that the owners of the property at 222 Brattle can repave, repave only the current two-space parking area. And that parking be limited to these two spaces. That's what we said in 2010. I can read you the exact language, but I think I've adequately summarized it.

ATTORNEY EDWARD RABINOVITZ: They can repave an area that was paved in 2010 already.

CONSTANTINE ALEXANDER: It says, our condition -- I'll read you the condition

exactly the way it was written that's in our decision. (Reading) No additional portion of the lot be paved. No additional portion of the lot be paved, covered with pavers, or otherwise turn into parking area at any time now or in the future.

So far so good from your point of view.

ATTORNEY EDWARD RABINOVITZ:

Absolutely.

CONSTANTINE ALEXANDER: So that repaving only the current two-space parking area be allowed, and the parking be limited to these two spaces.

ATTORNEY EDWARD RABINOVITZ: I agree with that.

CONSTANTINE ALEXANDER: That's what the decision said. And then Mr. Singanayagam goes on to say, referring -- your clients have

alleged -- this is the letter to you. Your clients have alleged that this area was not entirely used for parking previously, but had previously included only one parking space and not two parking spaces. That the owner improperly expanded the existing parking area from one parking space to two parking spaces and that the owner is, therefore, in violation of the condition.

Is that a fair summary of what you --

ATTORNEY EDWARD RABINOVITZ: That's really not what my people were saying. What my people were simply saying is that there was no parking where those trees were. Those trees existed --

CONSTANTINE ALEXANDER: The trees are not mentioned as part of our decision in 2010. I don't want to -- one second. You keep going back to the trees. I'm going back

to the language of what this was all about of our condition in that they could repave the current, repave the current -- only the current two-parking space area.

ATTORNEY EDWARD RABINOVITZ: Right.

CONSTANTINE ALEXANDER: That, that area included a tree. That tree can be taken down and they could repave where the tree was because it's the area. They can't expand the paving on the lot. The area that was used for parking before for two cars can be repaved and continue to be used for two cars. That's what he's saying.

ATTORNEY EDWARD RABINOVITZ: No. I would respectfully disagree.

Your decision said where they are parking now, they can continue to park. And if in fact they want to repave the area where they're parking now, they can do that in the

future. That's very reasonable. I understand that. Your decision spoke of the present, as of the date you issued your decision, not of something that happened ten years before that. And in fact, you said cannot now or hereafter pave or park anywhere else. They weren't parking where those trees existed. They couldn't physically have parked where a tree existed. All we're saying is that's the simple inquiry here. It isn't where they were parking at the time elsewhere. It's they couldn't have parked where these trees were. These pictures depict these two trees. These trees existed at the time. These trees were in place at the time. These trees were in place at the time. They couldn't have been parking on top of the trees, and it wasn't paved.

CONSTANTINE ALEXANDER: It turns on

the question the parking area. Is the area just a delineation of if you had like in a shopping center where you would lines drawn? Or is it the area -- general area in which the parking took place in 2010? That to me is the issue.

ATTORNEY EDWARD RABINOVITZ: Well, I would respectfully disagree. It's either they parked on that space or they didn't park on that space at the time.

DAVID TELLER: May I say something?

CONSTANTINE ALEXANDER: Sure.

DAVID TELLER: The word was repave which implies that you can pave anything that was paved before. That's my understanding.

CONSTANTINE ALEXANDER: You're right.

DAVID TELLER: And that area was not paved. It was never paved.

ATTORNEY EDWARD RABINOVITZ: It was not paved in 2010.

CONSTANTINE ALEXANDER: It was never paved?

DAVID TELLER: It was never paved.

JIL-ANNE BAILEY: No.

DAVID TELLER: That's my -- you can see pictures of the ground. You can see pictures of the paving line. It was never paved.

BRENDAN SULLIVAN: Gus, if I could chime in here. I guess --

JIL-ANNE BAILEY: Excuse me.

BRENDAN SULLIVAN: -- to me it's like two people who are looking at a glass that's either half full or half empty and it's sort of an interpretation. However, sort of resonates with me is that we -- our decision allowed them to park two cars tandem. And

wherever they could park those two cars, they could park them. Okay?

However, as counsel said, it would have been impossible for them to have parked and to continue to park where those two trees were located. And so I think we maybe -- we're saying if you look at the wording, and it can be somewhat restrictive in our decision saying you're allowed to park two cars. Well, okay, now they're parking two cars. So, okay, they've complied with our condition and we're allowing them to pave where they parked the two cars. However, it would have been impossible to have parked where those two cars -- where the trees were but now they have absorbed that area.

ATTORNEY EDWARD RABINOVITZ:

They're attempting to absorb that area. That's what they're asking for permission

for.

JIL-ANNE BAILEY: That's exactly -- that is exactly they said at the same time of the meeting, Mr. Bram said we are currently parking two cars. Yes, they were. Here was the tree, here was a car, here was a car. They can still do that. They can still park the car here and they can still park a car here. And we're saying there were trees here, you couldn't have been parking here because there were trees here. I mean --

ATTORNEY EDWARD RABINOVITZ: And that was the whole purpose of the restrictions. This Board was responding to further paving that was going to be made. That area where those trees existed was not paved and it was not supposed to be paved in the future. And what they've done is they've

taken down the trees and they're now seeking to pave that area where the trees existed.

CONSTANTINE ALEXANDER: I follow you.

BRENDAN SULLIVAN: And the issue for that, aside from having the trees present which offer an amenity, is that because the driveway is pitched down, that that area around the trees would have been permeable to would have absorbed some of the rain off.

JIL-ANNE BAILEY: Yes. Because our basement --

ATTORNEY EDWARD RABINOVITZ: And water runoff was one of the main concerns.

BRENDAN SULLIVAN: And not to expand upon a paved area which would exacerbate.

ATTORNEY EDWARD RABINOVITZ: And we have -- we have --

JIL-ANNE BAILEY: Yes.

ATTORNEY EDWARD

RABINOVITZ: -- requests from five neighbors in support of asking this Board to enforce what it issued back in 2010; namely, that whatever was paved then is fine but no more. And what's being sought now is an attempt to pave an additional area whether it's eight-by-eight according to what Mr. Bram put in his May application to the Board or 10-by-10 which is what he put in his letter to the Commissioner. This is a little unusual because what happened is Mr. Bram, following your suggestion, wrote a letter to the Commissioner asking for permission to park there. My letter to the Commissioner said I represent the neighbors and we oppose that request and we don't, we think you should deny it. The Commissioner's decision references that I requested that he enforce

the law. It doesn't reference the fact that it was Mr. Bram who requested a ruling for permission to park there. I'm not quite sure why it got switched from my opposition to responding to my request and he ignored. As far as I know, there's been no response to Mr. Bram's letter made by the Commissioner.

The other thing is, and maybe the Commissioner misunderstood and he can speak for himself, he talks about this paving as already having been occurred. At the bottom of this page he says they already paved it, which is not true. And so I'm not quite sure exactly what he's referencing.

DAVID TELLER: Can I say two things? First of all, in terms of the water issues, we had a substantial problem with flooding in our basement. As you might know that Brattle Street is much higher than Mount Auburn

Street. So there's been flow of water in the backwards and all of the five units on our side. The property have, you know, some level of water problems coming in the back. We've spent over \$6,000 in terms of landscaping, putting in barriers at the border, and so on. Making some changes to our basement to, you know, raise the threshold and so on to prevent water from getting into our property. We don't want that happening again.

CONSTANTINE ALEXANDER: Okay.

DAVID TELLER: The second comment, they were parking two cars on the property, but they were parking one of the cars in the right of way which was not an issue when the buildings behind them were essentially vacant. There was only one vehicle and there were no -- no condos or anything else.

ATTORNEY EDWARD RABINOVITZ: Let me interrupt you for a minute. There's a picture. They can park their two cars. In fact, this picture depicts three cars.

CONSTANTINE ALEXANDER: I wish you would have put these in the file before the hearing.

ATTORNEY EDWARD RABINOVITZ: I'm sorry. Well, we did have pictures in the file.

CONSTANTINE ALEXANDER: I mean before all the paperwork you're throwing at us.

JIL-ANNE BAILEY: We did bring -- I sent the materials to --

CONSTANTINE ALEXANDER: I mean all the written material, the report of the arborist, the --

ATTORNEY EDWARD RABINOVITZ: I

apologize to the Board for the late submissions of this material.

JIL-ANNE BAILEY: You know, they weren't late. I e-mailed these to Sean O'Grady. My husband gave them to David Burnes. We personally handed them to Ranjit. These photos have been given and given and given.

CONSTANTINE ALEXANDER: I'm saying more than the photos, Ma'am. I've talked about the arborist report. I'm talking about the exhibits, missing exhibits, that were handed out. There are a lot of documents --

JIL-ANNE BAILEY: They're not missing. They're in the file.

CONSTANTINE ALEXANDER: They were not. I went through the file and all the exhibits were not in the file. They

were -- your supporting statement was in the file and your reference to exhibits, but it's not in the file.

ATTORNEY EDWARD RABINOVITZ: I will tell you, sir --

CONSTANTINE ALEXANDER: Okay. I don't want to get into a debate about it.

ATTORNEY EDWARD RABINOVITZ: I personally came with Mr. Teller and I personally recorded this thick binder which was stapled with all the exhibits at both City Hall and with ISD and with the Board. And I am very troubled that there are missing documents. These are not the only missing documents. The exhibits that I have appended A through L, that were appended to my supporting statement, were physically handed to people behind that counter. I don't know what happened to them afterwards.

CONSTANTINE ALEXANDER: Okay.

SLATER ANDERSON: These right here?

CONSTANTINE ALEXANDER: I thought that was the agreement. That was attached to the agreement. That's the agreement.

ATTORNEY EDWARD RABINOVITZ: Those are the exhibits that came with the --

SLATER ANDERSON: Those are the exhibits.

CONSTANTINE ALEXANDER: I thought these were exhibits to the -- then I apologize. I thought they were exhibits to the agreement which was not an issue tonight.

SLATER ANDERSON: They're here.

ATTORNEY EDWARD RABINOVITZ: There are pictures.

CONSTANTINE ALEXANDER: Okay, my mistake. I apologize.

ATTORNEY EDWARD RABINOVITZ: What

I've also handed you, the letter to the Commissioner seemed to have been missing from the file. I don't know, with the 10 pictures that were appended to it. So I don't know. These pictures depict they can park, they have parked tandemly without parking in the area where those trees existed. There is no problem in that. That's what existed back in 2010. And what they're seeking now is to expand it. And it's not fair. The bottom line is that it's just not fair. They got an agreement that let them expand their building. In return they agreed that they wouldn't expand where they are going to park. And now they're looking to take advantage of that. They cut down the trees and they're now clearing that area and they want to pave it and park there. It's beyond both what they agreed to and what this Board ordered.

CONSTANTINE ALEXANDER: Does the Commissioner want to say anything or do you stand by your --

RANJIT SINGANAYAGAM: I stand by the letter.

CONSTANTINE ALEXANDER: You stand by the letter?

Questions from members of the Board at this point or I can open it to public testimony.

DOUGLAS MYERS: Just one question. I'm referring now to the picture that I'm holding, parking three cars 040613, could you point -- just indicate to me on that picture approximately where the trees were located?

ATTORNEY EDWARD RABINOVITZ: Right at the front of that.

DOUGLAS MYERS: Off outside the frame of the picture?

ATTORNEY EDWARD RABINOVITZ: Yes,
exactly.

DOUGLAS MYERS: Okay.

ATTORNEY EDWARD RABINOVITZ: Yeah.
And that's historically where they've
parked.

DOUGLAS MYERS: Approximately where
this -- near the corner of the fence?

ATTORNEY EDWARD RABINOVITZ: You
see this fence?

DOUGLAS MYERS: There's a corner?

ATTORNEY EDWARD RABINOVITZ: Yeah.
And that's the area. That's the eight or
10-by-10 or eight-by-eight, depending on
what you're talking about.

JIL-ANNE BAILEY: It's not paved
now.

ATTORNEY EDWARD RABINOVITZ:
There's another picture I think that shows

the area where the -- after the trees are taken down. This picture, this G1 picture shows the trees. And that's back further is where they parked before. And then -- let me see if I have that picture. The trees are still there. Again, G4 shows the trees and they were parking back from the trees and that's where their two spaces would start. Back from the trees.

CONSTANTINE ALEXANDER: Did you see it?

SLATER ANDERSON: Yes.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY EDWARD RABINOVITZ: Thank you.

CONSTANTINE ALEXANDER: Further questions from members of the Board before I open it to public testimony?

Is there anyone here wishing to be heard

on this matter? Mr. Bram.

ATTORNEY ANDREW BRAM: Thank you, Mr. Chairman. My name is Andrew Bram. I represent the owners of the property 222-Rear Brattle Street. I haven't seen these pictures yet, but I want the Board to just take into account a couple of things.

First, there's been a lot of discussion about these old trees which we contend were in fact shrub trees that may have in fact grown to 10 feet or 15 feet, but they were nonetheless scrub trees. But this is the best picture the Board can look at. These are the trees in question and this is the driveway in question. You can see the for sale sign on the property. This was taken before my clients bought it. Okay? And you can see that there's a car parked almost close to the fence. You could pull up in the area

that we're seeking to pave right now, but your car would brush the branches of these trees that were there. Any testimony that these trees impeded the parking of this car is a flat out falsity. Okay? This picture proves it. You could park very close to that fence, within a couple feet of it, but it's true, if you were getting out of your car, you would have brushed these trees. The area we're seeking to pave is roughly where this car is now.

CONSTANTINE ALEXANDER: Hold on a second. You said roughly. Just give me, I mean, just give me how roughly? How rough is roughly?

ATTORNEY ANDREW BRAM: Well, the area --

CONSTANTINE ALEXANDER: I mean roughly could be this whole area here, for

example.

ATTORNEY ANDREW BRAM: Here's what's been paved to this point. This is the fence back here. This fence is the same as this line here. You don't see this portion because it's in front of this car. Okay?

We, over here on this side, the reason that this is critical in their discussion of how we can park cars further back doesn't in fact work is that this is the site plan for the property, and the Board saw this in the original Zoning application. This property has a shared right of way and it comes in off of Brattle Street, okay? This right of way provides access to the Brattle Circle development. We cannot legally park here. We are seeking to park in this here. This area here, which is part of the Brattle Street development, has already been finished with

these pavers. There's nothing that these people -- they have no control over it, no say over it.

CONSTANTINE ALEXANDER: It was finished what, before 2010?

ATTORNEY ANDREW BRAM: No, no. It was starting the connection with the redevelopment of Brattle Circle.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY ANDREW BRAM: Okay? But it was all paved. Okay? We paved up as far as we could, okay --

CONSTANTINE ALEXANDER: Where did you pave on this plan here? I'm sorry, I'm not following you.

ATTORNEY ANDREW BRAM: Okay, here's -- let me orient it this way. Here's Brattle Street. And we have paved up in -- this is the area that's next to us.

We've paved up to -- you know, where this little corner of the property is right here.

CONSTANTINE ALEXANDER: Right.

And you paved it there and how far --

ATTORNEY ANDREW BRAM: No, nothing. No paving in here. In fact, the other part of this that is a bit troubling to my client is that when this originally was proposed back in 2010 and when these people objected to this, okay, the original proposal that my clients made was to park a car in the yard of this house; one car back here and one car in the yard. They objected to any part of -- any parking in this yard area. So when we came to the Board, we agreed we would give up the space, we would not pave any part of this. This would all remain green space, and we would park in this area. And this is what the Board allowed us, was two cars in this area

here. And this was discussed before the Board. They're saying that we agreed not to do any more paving or whatever, was paving the yard itself. Okay? Which we agreed. We didn't do and we didn't do. We cannot now legally get our two cars in the right of way area unless we can park in a tandem here. Okay?

This area was in fact paved before. It was broken up. It wasn't intact paving but it was paving, okay? This is the hard gravel that's under that. This is not something that we did or touch or whatever. This was the paving in that area. You could walk out there today and see old parts of hot top in this area on the ground.

CONSTANTINE ALEXANDER: Ranjit, did you want to come around and look?

DOUGLAS MYERS: So there were

no -- of the trees that are being referred to they were not located --

ATTORNEY ANDREW BRAM: They were here.

DOUGLAS MYERS: -- and they were within that area?

ATTORNEY ANDREW BRAM: They were in this part, right, they were in this -- you can see it, you can see it best in this picture here. These are the trees. They were in the very corner, they were in the very corner of this part of the right of way nearest the house. Right in that corner there. Partially --

DOUGLAS MYERS: Including their trunks? Their trunks.

ATTORNEY ANDREW BRAM: The trunks were not -- the trunks are six inches. So it shows on that architect square, which by the

way, is not an accurate representation of where the trees were. That's not what the architect or the surveyor was concerned about where precisely it was located on the street. We dispute that that's where the trees were. This picture shows where they were. But he says -- the architect, the engineer says one tree was six inches, one tree was eight inches. Okay? Those trunks were somewhere in the corner where this new retaining wall is. Okay? And as the Chairman has already said, we had a right to -- there's nothing in the decision that prevents us to remove those trees, and we've now built this retaining wall because, again, one of their complaints and, again, part of my objection to their, even their appeal, is that they haven't shown yet that they're aggrieved by the decision to pave this. Under the statute they need to be

an aggrieved party. They need to show some reason why our paving this is a problem for them or for their property.

CONSTANTINE ALEXANDER: You mean standing essentially?

ATTORNEY ANDREW BRAM: Standing, yeah.

CONSTANTINE ALEXANDER: That issue --

ATTORNEY ANDREW BRAM: I understand.

CONSTANTINE ALEXANDER: We don't determine standing. That will be in the court of law if it gets to a court. You understand?

ATTORNEY ANDREW BRAM: The Board can take into account that they need to, other than saying it's unfair, and I'm not sure how it's unfair that this be paved, they don't

have a reason to complain about this. They've talked about drainage, okay. We as part of our construction, okay, put in an elaborate drainage system, again, at their request. And I know the agreement is not before the Board, but as part of that agreement, we put in a lavish drainage system that goes between our property and theirs. Instead of a one-foot wall, which is all the agreement called for, we put in a four-foot wall to separate them. Under this, okay, in this area over here is a gigantic dry well. Okay?

CONSTANTINE ALEXANDER: Subsequent to your doing that work, did you receive complaints from the, from the Petitioners here that it didn't work, that they were still having water problems?

ATTORNEY ANDREW BRAM: No, not a

word. Nothing other than the fact that they were unhappy --

JIL-ANNE BAILEY: We did to send you an e-mail.

ATTORNEY ANDREW BRAM: That they were unhappy about --

CONSTANTINE ALEXANDER: Now, wait a second. I'll give you an opportunity to speak on that.

ATTORNEY ANDREW BRAM: No.

CONSTANTINE ALEXANDER: Your testimony is that you put this in as an accommodation to prevent the problems that we were trying to address back in 2010 --

ATTORNEY ANDREW BRAM: We --

CONSTANTINE ALEXANDER: Wait, let me finish. And that subsequent to doing that as far as you were aware or your clients were aware, there were no further problems?

ATTORNEY ANDREW BRAM: Correct.

CONSTANTINE ALEXANDER: That's your testimony?

ATTORNEY ANDREW BRAM: Correct.

CONSTANTINE ALEXANDER: You'll have your opportunity.

JIL-ANNE BAILEY: Okay.

ATTORNEY ANDREW BRAM: In addition I want to point out that part of what was done and, again, in conjunction with an agreement with Marty Hill who do the development next-door, was to do these kids of pavers which was not totally impervious. Okay? They have, you know, spaces where there can be a certain amount of drainage on the site. And the -- all the gratings were done so that the water doesn't run towards the Mount Auburn Street property. So we feel that, you know, the Board's decision allowed us two

spaces. We can only have those two spaces if they're beyond the right of way. And this is only 32 feet. So if you get two spaces, we have to be able to park in this area here.

CONSTANTINE ALEXANDER: Let me ask you a question and maybe not a fair question. If the facts are as you stated, that you what you've done is prevented the drainage from going into their property and no problems should arise hereafter, why are they opposing relief tonight?

ATTORNEY ANDREW BRAM: Because Mr. Rabinovitz says they think it's unfair.

CONSTANTINE ALEXANDER: I'll give them a chance to give their point of view. I wanted to get your --

ATTORNEY ANDREW BRAM: I don't know why they're here. We've not had a complaint articulated.

CONSTANTINE ALEXANDER: You'll have a chance. You'll have a chance. I'm just trying to get to the bottom of what's going on here. I mean -- this is worst than, well, never mind. Jarndis versus Jarndis (phonetic).

Okay. Anything else, Mr. Bram?

ATTORNEY ANDREW BRAM: Not right now, thank you.

CONSTANTINE ALEXANDER: You may not have a chance later on at least tonight. I'll give you a chance.

ATTORNEY ANDREW BRAM: Thank you.

CONSTANTINE ALEXANDER: Anyone else wishing to be heard?

Sir.

MARK SCHMIDT: My name is Mark Schmidt. I'm the architect for the owners of 222 Brattle Street. And so I couldn't see

all the photographs that you're looking at. But in fact -- so this photograph I took when I was first introduced to the property, and -- so two points I think I would make. The photograph clearly shows, and I clearly recall that when I drove up, I could park almost to that fence. I mean, I think I have scratches on the hood of my car to prove that I could slide under the branches. That was so clearly parking -- it was possible to park almost right to the fence.

Point 2 is that I believe that the site plan that shows the location of that tree being almost in front of that red car --

CONSTANTINE ALEXANDER: Right here?

MARK SCHMIDT: Yeah. So if you compare the site plan with the photograph, it would appear that the trunk of the tree is directly in front of that red car in the

photograph. I don't think that's possible. So I think that Mr. Bram's assumption that perhaps the site plan was not totally accurate is in fact true. That -- and I know that from survey work and what kind of work I do that sometimes you're very accurate and precise about certain elements and then sometimes somebody said well, there were two trees here just put them down --

CONSTANTINE ALEXANDER: I would think that trees are something that can be a little bit -- tend to be inaccurate because it's hard to measure exactly where a tree is. That's how -- what site plans. Do they more worry about the structure, the physical.

MARK SCHMIDT: That's correct. And the surveyor wasn't instructed to locate those trees precisely.

CONSTANTINE ALEXANDER: Let me ask

you a question, sir, or Mr. Bram. This photo which you're both relying on, was this given to the Commissioner? Did he have this?

ATTORNEY ANDREW BRAM: Yes.

CONSTANTINE ALEXANDER: He did?

MARK SCHMIDT: I submitted it with a letter to him on June 1st.

CONSTANTINE ALEXANDER: Okay.

Was this photo ever shown to the Petitioner or to their counsel?

ATTORNEY ANDREW BRAM: I don't know. I did not show it to them.

CONSTANTINE ALEXANDER: Okay.

MARK SCHMIDT: And the third and final point and then I'll sit down is that area underneath the front of this red car which was not paved at the time, was in fact, it was un -- it did not impede any runoff. In fact, it aided any run -- there was no way to

stop rain from coming down that driveway. So I think what they've done in the interim has in fact improved and controlled the runoff. So, from that point of view I also think that the work's been done -- has been, has been an asset to the abutters because it's protected --

CONSTANTINE ALEXANDER: Obviously they don't agree.

MARK SCHMIDT: Anyway, I just wanted to say that.

CONSTANTINE ALEXANDER: Thank you. I'm going to give other people a chance to speak.

Anyone else wishing to speak?

ANGIE FAWCETT: Angie Fawcett. I do some project work for them. I live here in Cambridge. And every abutting neighbor all around that actually faces the yard have

submitted letters, which hopefully you have, stating that they agree that this was the way it was always supposed to be. And I just think that that should be known. That everybody else that actually faces and has anything to do with actually looking on the property, including the two people that have lived there for -- one for almost 20 years and the other woman for similar, all said that there were always two spaces there.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishing to be heard on this matter?

WILLITS SAWYER: My name is Willits Sawyer, W-i-l-l-i-t-s. I'm the trustee of the property for my wife.

CONSTANTINE ALEXANDER: This is a condominium association?

WILLITS SAWYER: No, no. I'm the

trustee. My wife and I own the property and we're the neighbors. We've never spoken other than a couple nice calls about the dog or the cat which I appreciate. But I am terribly disappointed in the relationship that has developed. It was never our intent to harm or hurt anybody in the neighborhood. And we have bent over backwards to meet all of the requirements way beyond \$6,000, putting in the cistern and the draining system and taking big trees down and repairing the fences and building a drywall. And in addition, planting eight more additional trees and making a nice barrier and putting in a fence. Not to mention working with the developers to do all this paving which is running well over \$30,000. We don't quite understand what the issue is about completing this, whether it's eight

square feet or ten square feet. We cannot park without having a hazard to the other neighbors we get along with quite well now. If we park in the right-of-way area, which where we used to park as was pointed out, they be able to back out of the spaces they're in, they will hit us. So we have the 32 feet. And everything went along. Heart and Hail was the contractor and he paved right up to the fence and it didn't seem to be a problem until we got the notice that we couldn't do this. It's a hazard. It's a parking hazard. It -- there's no place for us to park two cars. There's only 32 feet. And fortunately we have two small cars and we can get in there. But as I said, first of all, I'm -- this has been going on for over three years and we're sort of baffled as to why it continues. All our neighbors want us to

hurry up and get this done because the pavers are sitting there. We haven't finished the driveway. This issue about whether it was paved before or not, it definitely was a driveway before. There was macadam in there, and the trees came up through it. When we agreed that we would not pave any additional area, what I wanted to do and what the original plan was to be able to back in right here so I could drive out. And that way when I back out, people with baby carriages walking across, I wanted to back my car in here and pull out. And part of the agreement was that we would not pave any additional part of our lot.

CONSTANTINE ALEXANDER: I remember that as part of the decision.

WILLITS SAWYER: And when this issue was discussed, we never even talked about it.

As a matter of fact Mo was here, our next-door neighbor, and every time she got up to talk about parking, if you remember, you said no, we're not talking about parking. Take that up with the parking -- what we were talking about was the lot. And when we made our agreement that we do no more paving in our lot, we agreed to give up having the turn-around spot. And here's one on the other side.

Well, anyway, I just wanted to tell you that.

CONSTANTINE ALEXANDER: Thank you.
Thank you.

WILLITS SAWYER: Thank you.

CONSTANTINE ALEXANDER: Anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: The Chair

notes that there is no one else wishing to be heard.

ATTORNEY ANDREW BRAM: Mr. Chair, just one thing for the record. In the Zoning Ordinance itself --

CONSTANTINE ALEXANDER: I'm sorry, I missed it. Say it again.

ATTORNEY ANDREW BRAM: Our Zoning Ordinance permits this type of parking. I wanted it to be clear because there was some discussion about being within five feet of the property line. And I want to point out that under Section 6.43.2 that tandem spaces are allowed for this type of, you know, for family dwellings with one family using them. And under 6.441, subsection 2 says except for one, two, or three-family dwellings, no on-grade open parking shall be located within five feet of any side of the parking lot.

Where we're proposing to park up close against the fence is in fact permitted under the Ordinance. Again, the Ordinance in other parts talks about site barriers. This is a very effective sight barrier here in a large fence. So it's not going to be a question of lights shining onto their property. And in fact, on their side of the fence there is now another tree which provides additional site barrier for them on their own property from this limited area in front of the fence. So I wanted to be clear for the record that this is something that's permitted under our Ordinance.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

Any, again, one more time, anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: No one wishing to be heard.

We are in receipt of letters. The Petitioner has submitted several letters to us which I'll read into the record.

There's a letter from Debra Candreva, C-a-n-d-r-e-v-a and Erik with a k, Barnes who reside at 457 Mount Auburn Street, No. 8.

(Reading) We write to you regarding the enforcement of the Variance at the property in question. Our neighbors Jil-Anne Bailey and Dave Teller at 457 Mount Auburn Street, No. 5 have struggled with water in their basement since 2007. As we understand it, this was caused at least in part by rainwater that runs down the driveway serving 220 Brattle and 222/220 Rear Brattle. Jil and Dave spent considerable time, effort, and money to rectify the problem. When the

owners of 222/220R Brattle needed a Variance to build their additions, they negotiated a set of conditions to prevent any increase in water flow from the property. This included an agreement not to increase paved areas on their property and to preserve the existing trees. And let me offer an observation, that's not true about preserving. There's nothing in our Variance. I'm not going to get into the agreement. Nothing in the Variance about preserving existing trees. That statement is not correct.

(Reading) Unfortunately it seems that this agreement is not being upheld. He goes on to talk about the trees. This deals with the agreement. As I said, that's not before us tonight so that's not relevant. I'm not going to read the rest of the letter as a result.

We have a letter from Melinda Ponder, P-o-n-d-e-r, 457 Mount Auburn Street, No. 6. (Reading) I would like to express my support of Jil-Anne Bailey and Dave Teller's appeal of the Commissioner's decision in this matter. I do not feel the owners of 222 Brattle Street should be allowed to violate the conditions that they agreed to in obtaining their Variance by paving an additional portion of their property and using it for parking. I am concerned about the impact additional paving will have on the amount of water flowing from their property onto our complex which has caused flooding issues in the past. I'm also concerned about the health of trees in that area of our complex.

We have a letter from Barbara M. Brizuela, B-r-i-z-u-e-l-a, Mount

Auburn -- 457 Mount Auburn Street, No. 2.

(Reading) We are writing to request the Commissioner Inspectional Services enforce the Variance conditions approved by the Board of Zoning Appeal that prohibit the owners of 222 Brattle Street from adding any paved area or increasing the amount of parking on their property. These previously approved conditions were negotiated to prevent any increase in water flow from 222 Brattle Street to our property. This water flow has caused problems to our property in the past. Regarding -- reneging on this approved Variance condition will bring back water problems to the property at 457 Mount Auburn Street. We request that the Board of Zoning Appeal not deviate from the prior approval and risk damage to our properties.

We have a letter from Ronny Sanders that

resides at 457 Mount Auburn Street, No. 7. (Reading) I am writing with regard to 222 Brattle Street and the case referenced above. I am concerned that the neighbors at this residence have proceeded in a fashion that impacts the units at 457 Mount Auburn Street, particularly unit No. 5. The changes 222 Brattle Street made to their property are not in line with's aesthetic conditions agreed to by them in unit 5. It has left a situation where excessive amounts of water runoff the payment constructed at 222 Brattle Street and to the grounds of unit 5 and the rest of our common area. The agreement between the parties -- it says about the trees and, again, I'm not going to read that because that's not before us.

We have a letter last, we have some more actually in the file. We have a letter from

Roxanne and Michael Field. I don't see an address.

Do you know their address?

Oh, no. Here it is. I'm sorry, it's in the letter. (Reading) As the owners of 457 Mount Auburn Street, No. 4, Cambridge, we are writing to request that the Board enforce the above Variance. A great deal of time and energy was spent setting out the very specific conditions to this Variance to prevent water flow from 222 Brattle Street to 457 Mount Auburn Street. Over the years water drainage has been an issue for unit No. 5, at 457 Mount Auburn Street and water in their basement with heavy rains. In turn this a potential water drainage issue to all of the units at 457 Mount Auburn Street. One of the conditions of the Variance prohibited 222 Brattle Street from adding any paved area

or increasing the amount of parking on their property. The owners of this property are now attempting to add to the paved area. This is in clear violation of the Variance which must be strictly enforced by the Board of Zoning in order to prevent further water drainage to the properties at 457 Mount Auburn Street.

And in addition we have letters and maybe there's duplicates, but I'll see in a second, in our files. Bear with me for a second. I think I did see them in the file when I went through the file before.

A letter from Gary and Amy Seligson, S-e-l-i-g-s-o-n, 220 Brattle Street.

(Reading) We are writing in support of the Petitioner's request to lay pavers in the rear of the driveway at 222 Brattle Street in order to reestablish two tandem parking

spaces. We attended the hearings, case No. 9963, in which parking was discussed. It was decided that 222 Brattle would not be allowed to expand parking into the area used and lawn garden, and we agree with that restriction. However, it was our belief that the Petitioners would not be prevented from parking right up to the end of the driveway. We own most of the driveway and both 222 Brattle and some of the units at Brattle Circle have an easement to cross it in order to park in the rear. The previous long time owner of the Petitioner's property had one small car so she allowed some scrub bushes to grow at the end of the drive. The space next to hers was being used for storage parking of a derelict car, and there was one other car which was occasionally parked, so there was no crowding problem previously. But now if

the Petitioners are not allowed to add pavers and park at the end of the driveway, it will increase significant congestion now that four additional spaces have been assigned to the owners of the Brattle Circle condos. The Petitioners have been considerate and responsible neighbors and I feel it would create a hardship to them as well as to the other units of the driveway to prevent them from reestablishing this parking area.

And I'll just state and make it clear, although I think it's obvious, the Petitioners that these persons are referring to are the owners at 222 Brattle. The Petitioners technically are the two of you before us tonight.

We have a letter from Tom Chelliah, C-h-e-l-l-i-a-h and S-h-a-n-t-h-i S-h-a-n-t-h-i Thomas, Four Brattle Circle.

(Reading) We are writing to further support the Petitioner's request -- and again it's the owner's request -- to lay pavers in the rear of driveway of 222 Brattle Street in order to establish two tandem parking spaces. We live in the new condo development. Our unit is Four Brattle Circle and our parking is tandem to the two parking spaces assigned to Rosalie Hornblower and Willits, W-i-l-l-i-t-s Sawyer. In order for us to be able to get in and out of our assigned spaces, we have to all move each car out to Brattle Road and move in a single file. By allowing Rosalie and Willits to pave their driveway to the end of the fence, we could all gain some space to allow each of us to get in and out a little more easily. We hope this can be a consideration and an easy accommodation.

And we have some more letters which I

think I should read.

A letter from Martin W. Hill from the Hill Harder Development group. (Reading) I am the developer of the new residences at 1-7 Brattle Circle which abuts the property that's currently under consideration by Board of Appeal. As such, my property has a use of one half of the driveway in from Brattle Street all the way to the back lot line which abuts 457 Mount Auburn Street. In the process of installing the new driveway pavers in the right of way and on my side of the common driveway, I was told by Mr. Sawyer that due to the complaint of one neighbor I should hold off on completing the paver installation on his side until the Board of Appeal approves the driveway completion which we have done. While installing the driveway pavers, I personally observed old

pavement, mostly broken, but some portions intact over the full width of the driveway. There was evidence of some weed trees which had taken root, but they were not in good shape and had removed. Since we have to remove the entire old hot top to install the new pavers, it was clear to me, so it is my opinion, that the area on both my property and Mr. Sawyer's property was originally used for parking. The people from with whom we bought the property used the parking up to the fence right up to the time we purchased the property in 2010. In addition for the Board's consideration, at the midpoint of the common drive length is a turn into the Brattle Street property which are private parking for unit No. 3. This is a legally registered right of way at the Registry of Deeds. Unless the Sawyers acquire the right to park

their vehicles at the head of the driveway -- to the head of the driveway, their two vehicles would impede the access to my right of way which is not allowable. So at this juncture Mr. Sawyer is limited to one parking space. I support Mr. Sawyer's petition not only because it resolves without issue my buyer's access concerns, but also because aesthetically it will create a better appearance and eliminate mud and drainage issues if the driveway can be uniformly completed.

There's a letter from Mark Schmidt. And you already testified, sir, so I don't think I need to read your letter.

MARK SCHMIDT: No.

CONSTANTINE ALEXANDER: There's also a letter from Anita Berrizbeitia, B-e-r-r-i-z-b-e-i-t-i-a. States:

(Reading) As the landscape architect working with Willits Sawyer and Rosalie Hornblower on their property at 222 Brattle Street, I would like to share with you my observations regarding the yard and parking area in front of their property. When I first visited the property soon after it was purchased, 2010 or thereabouts? The areas around the building had overgrown plant material, mostly rhododendron and azaleas along the north fence which is not particularly healthy and had not been taken care of in many decades. The soil was generally in poor condition as well, and my overall sense of the place was that it needed a renovation of a plant materials since they seemed to be close to dying. This was particularly true in the far left corner of the driveway. A group of unhealthy and overgrown seeded trees were at

the edge of the driveway and offshoots that crept along coming up through the pavement in what was their front parking space. This growth was insignificant and dying and certainly not worth preserving. We have since removed the ugly overgrowth that invaded the existing driveway along with the overgrown greenery and planted three new and healthy cherry trees along the front of the property line. We also planted four new and healthy arborvitae trees along the fence on the south side, amended the soil where possible, and have planted new perennials and shrubs along the fence and the north side. More planting will take place in the future.

To finish the plan and make the parking area both functional and visually appealing to the surround neighbors pavers should continue to the privacy fence at the end the

alleyway matching those used by the neighbor where he parks two cars on his side of the shared space. I see no reason whatsoever why these pavers should not be allowed to continue all the way to the fence especially in light of the fact that the adjacent half of the driveway is paved. It seems that the issue is that the old tree at the other side of the fence may be impacted by the small area of pavement. This in fact does not make sense at all since, as we all know, the roots of trees extend around all sides of the trunk, not just under Mr. Sawyer and Ms. Hornblower's parking spot.

Those are the letters that we have in our files. I'm sorry, I would appreciate that you only speak when you're recognized. I'll entertain your question.

ANGIE FAWCETT: There might be one

more letter from Ginny who is the front neighbor who also -- who lives across from Mr. Seglison.

CONSTANTINE ALEXANDER: You're right. Thank you, I missed that.

There's a letter from Virginia M. Adams. (Reading) I'm writing to support my neighbors Willits Sawyer and Rosalie Hornblower in their request to lay pavers at the end of their driveway at 222 Brattle Street in order to have two parking spaces which border their yard. I have lived at 224 Brattle Street for 17 years and knew the former owner who had one car. That fact should not cloud the issue of two parking spaces, because if she had had two cars, this is where she would have parked them for the 50 years that she lived there. Who knows if at one time she did use two parking spaces.

At any rate, it seems curious that an abutting neighbor objects to the Petitioner's right to park two cars on their own driveway.

And I think I now have all the letters.

Before you're going to have your opportunity to speak, I know you're dying to speak and that's fine. I want to go back to why we're here tonight. And it goes to some of these letters. I wanted to read them to give us all background, and because this issue is a contentious issue, give everybody a chance to be heard. The issue is the correctness of the Commissioner's decision. And his decision is basically an interpretation of the Variance we granted in 2010. And so, and we're getting a gloss on what's going on here. You claim it sounds like water damage because of the condition has not been observed. Others are saying

that it really improves the parking for neighboring properties and added, what's being done is consistent with the past uses of the property in general terms. I say that just to frame the issue a little bit and to hopefully focus our decision and your comments and anyone else's comments. So I'll shut up now. It's your opportunity to speak.

ATTORNEY EDWARD RABINOVITZ: Go ahead.

JIL-ANNE BAILEY: Okay. Can you pull that picture back out with the red car?

CONSTANTINE ALEXANDER: Which one you want? There are so many pictures we have.

JIL-ANNE BAILEY: The one Mr. Bram gave you with the red car.

CONSTANTINE ALEXANDER: This one?

JIL-ANNE BAILEY: Yes, sir.

I hear what the neighbors are saying, and we went and looked at the file to talk with, you know, to see what was being put in from the other abutting neighbors. The thing is we're in a townhouse. This is our townhouse.

CONSTANTINE ALEXANDER: Yes.

JIL-ANNE BAILEY: And our big picture window looks, and our living room, our main living space, looks right out on the yard and the driveway. So we do actually see the driveway.

CONSTANTINE ALEXANDER: Yes.

JIL-ANNE BAILEY: And we used to not see the driveway because the trees use to be there. Okay. The trees that were cut down that we're saying they couldn't have parked on top of?

CONSTANTINE ALEXANDER: Yes.

JIL-ANNE BAILEY: So this is from Brattle Street looking down. And I have the same view with Willits' and Rosalie's van. Okay? So, yes, these are the same trees. You can see they're pretty high. They almost come up to our townhouse.

This is the view from our living room window. That is one of the trees. That is the other tree. This is our fence. There is no way that they were parking up to our fence with those two trees because they couldn't because the trees were there. And so we've been asking can you please keep this space right here, that wasn't previously parking, not parking because the trees were there and kept -- prohibited them from getting to our fence and from parking here. Do you understand? So, yes, this does look like

they're almost parking at our fence, but this is the same parking situation, and this is what it looks like from our living room and bedroom window that we look out and look at. So those are the trees that we're talking about. Do you understand now what I'm saying?

CONSTANTINE ALEXANDER: Yes.

JIL-ANNE BAILEY: So there's no way they were parking all the way up to our fence because they couldn't park all the way up to the fence. They're physically unable. So this portion, all these trees, did help disburse the water runoff and did help absorb some of the water that came down when it rained. This, this, this part here where they're showing, this was dug up multiple times. We went to Martin and Lauren before they ever started paving the driveway and let

them know about the conditions of the Variance. Let them know about our side agreement. This has gravel on top of it now. This is not dirt. There is gravel on top of this, and that's what it looked like when the picture was taken. Because, again, we can see this from our window. As far as the yard and the trees, Miss Apple lived there when we moved in. And I used to watch Miss Apple in her yard taking care of her bushes and her flowers and her plants. She also had an older gentleman that would come and take care of her yard for her. There was a little bit of overgrowth because Miss Apple passed away and the house was up for sale for about a year. So, yes, some of the yard grew up a little bit. But I watched Miss Apple and her gardener tend to that yard.

As far as the runoff, when Mr. Clark was

our lawyer -- when we started this process Mr. Steven Clark was our lawyer. As you all probably know, he passed away. We have e-mails where we wrote to Mr. Clark and said, we're having problems. Now that they've put in the retaining wall, water's coming in in different places. There's still water running off. We put boards under our fence to help keep some of the water out and our boards are still getting wet and there's still some water coming in. We have spoken to our neighbors. And it, there's -- it's just been unpleasant because some of our, our concerns were not taken seriously as if we were just complaining. So we've come to the Board, we let you know about the water issue. You guys made a condition to help us protect our property. We took away our objection to them having an addition. They now have an

addition. Part of that addition is within five feet of our fence line. It's built, it's done. We're just asking the Board to please keep the condition in place, that was one of the things you put in place for them to have their addition. And that's the fact that these trees existed and they couldn't have parked on the trees or past the trees because the trees prohibited them from parking.

CONSTANTINE ALEXANDER: I want to go back to one thing, and Mr. Bram in response to a question or he advised us that the -- the current Petitioners, the owners at 222 Brattle, had put in a drainage system and taken steps to prevent water running from into your property.

JIL-ANNE BAILEY: But their --

CONSTANTINE ALEXANDER: Let me

finish.

JIL-ANNE BAILEY: Sorry.

CONSTANTINE ALEXANDER: You'll have a chance.

JIL-ANNE BAILEY: Sorry.

CONSTANTINE ALEXANDER: And he said as far as we know, that we've never been told that there have been any problems since they did that. Do you dispute that?

JIL-ANNE BAILEY: Yes, I do.

CONSTANTINE ALEXANDER: You've had water damage in your basement?

JIL-ANNE BAILEY: Not in our basement. We've had water coming into our yard. And we went --

CONSTANTINE ALEXANDER: Water comes in yards. Water, I mean --

JIL-ANNE BAILEY: Right. We haven't had the kind of rain that we had

back -- we haven't had that sudden fast, flooded rain like when Waltham was flooding and different parts of town were flooding. That's when our yard was flooding. We haven't had that kind of rain again since then. So I don't know that we're not gonna have water running from Brattle all the way down to Mount Auburn through five town homes because we haven't had that kind of rain again.

CONSTANTINE ALEXANDER: So your concern is that you might have a problem in the future depending on rainfall --

JIL-ANNE BAILEY: Exactly.

CONSTANTINE ALEXANDER: -- or hurricanes or whatever?

JIL-ANNE BAILEY: Exactly.

CONSTANTINE ALEXANDER: I'm trying to understand, I am anyway --

DAVID TELLER: Can I say --

CONSTANTINE ALEXANDER: Would you let me finish, please?

DAVID TELLER: Yeah, sorry.

CONSTANTINE ALEXANDER: I'm trying to understand exactly at issue here.

Because what -- sitting here, sitting here, you know, I am, I'm just amazed that we should have this fight and spend this much time on this kind of an issue unless there's a real problem. And I thought water, maybe the water damage to your property is a real problem, but what I've heard so far, is so far there has not been major water damage. Yes, water runs into your yard, but I think that happens at the bottom of the hill anyway. If your basement were being flooded, that might be something else and you have to bring plumbers and in and the like. But I haven't

heard -- you're afraid it might happen in the future, but so far it has not happened. Am I correct?

JIL-ANNE BAILEY: Yes.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY EDWARD RABINOVITZ: But that's not what we're talking about. We're talking about further pavement going on. And I would draw to your attention Exhibit E in our appeal, which is part of the transcript of the 2010 hearings in which you yourself interrogated Mr. Bram about what they were going to do and what they weren't going to do. And time and time again you say: "If the owners don't agree that there will be no parking outside the current driveway parking area, and I think the only thing you're doing you're not doing is you're not going to park outside the current driveway, you're just not

going to pave.

"ATTORNEY BRAM: Right. Paving exists. We may redo that paving with pavers, but we're not going to add parking."

Those pictures conclusively show it was not paved where those trees were. It's not paved now. They want to add paving. It's -- there's no -- this isn't fancy.

CONSTANTINE ALEXANDER: What happened in 2010, I'm sorry to interrupt you. You want to finish? I apologize.

ATTORNEY EDWARD RABINOVITZ: Yes.

This isn't fancy. What they have is a little bit of regret because now there's a development that shares that driveway area and other people are now competing with them for using the driveway area and they don't want to park where they agreed they were parking before. Mr. Willits got up and very

candidly admitted that's where they had parked. They parked further down right there. But now they can't do it because there are people across from them who are trying to get in and out and they're getting a little conflict, and it would be nicer for everybody if they could park further down and everybody's life is easier. And unfortunately that's not what they agreed to. And that's not why these people should suffer because they decide now they made an agreement that they perhaps shouldn't have made. There are five, six, seven times during this transcript that's an exhibit to this petition, where Mr. Bram says, No, we're not going to pave anywhere else. Only the existing paving. Now they can come up with an architect or they can come up with the developer who next-door has now come in and

wants to pave everything with pavers, and say, yeah, there's some broken stuff. That's digging down. If you want to dig down, you'll find maybe pieces of paver. I don't know. The bottom line was it wasn't paved. And it didn't exist with the trees there and it doesn't exist now. They want to add paving. It's as simple as that. That's what his 2013 May request was to this Board. And you sent him back to the Commissioner and said, we can't, we can't rule on that, go ask the Commissioner, maybe he'll let you do it.

CONSTANTINE ALEXANDER: Okay. And that's -- let me respond to the semi-memory is adequate. It's not these days.

The issue we had in 2010, the major issue was putting an addition to the property. And there was objection to that. And then parking came up as part of that. And

in our mind, or at least my mind as the Chairman was, we're going to allow the addition, but your concerns about blacktopping, if you will, the entire backyard and making it a parking lot was about it, or parking -- increasing the parking. The thrust of our decision in 2010 is, was, okay, you have two parking spaces now. You can continue to have two parking spaces. You don't move them. You have two parking spaces and that's, that's the quid pro quo in our minds. And it doesn't say that in the decision, but that's how I think we reached our decision in 2010. And we didn't want people -- I say driving all over the backyard and basically making it a parking lot which would adversely affect your property.

Now, the Petitioner is gone and paving an area and you've objected. We've sent it

back to the Commissioner to interpret what we meant and what was the thrust of our 2010 decision in opposing the conditions. And he has concluded, which you're appealing, and we haven't decided this, he has concluded that essentially what is being -- what they want to do does not -- and he has, not essentially, does not violate the condition before. I think I use these words. I would put it in the characterization within the spirit and if not the exact letter it is within the spirit of the Variance we granted in 2010. That's what I think.

DOUGLAS MYERS: May I ask a question?

CONSTANTINE ALEXANDER: Go ahead.

DOUGLAS MYERS: I'd like to ask the appellant, if the trees had been -- if the trees in question had been blown down in a

windstorm, completely uprooted and were removed, are you saying that in that case the place where the trees had been located is some sort of a protected area in terms of what this Board ruled in 2010?

JIL-ANNE BAILEY: Yes.

ATTORNEY EDWARD RABINOVITZ:

Absolutely. Well, not only is it protected by the explicit wording you used, I give this Board great credence in having chosen the words that you chose. And I give you great credence in the examination and the promises that you got at that hearing in granting a Variance. You got specific, specific agreements nothing else would be paved. Moreover I would respectfully disagree with your interpretation of what the Commissioner's job is. The Commissioner's job is not to interpret the language of what

you issued. Yours was very explicit. His job was to factually find whether or not the area where they want to pave is or is not within the area that you authorized parking. I would suggest that that is what his job was.

DOUGLAS MYERS: One more question. And you're saying that in the area where the trees are, were located, that historically there has never been any paving or macadamized material on the surface or within an inch or two -- as I'm listening to you -- within an inch or two of the surface of the land?

ATTORNEY EDWARD RABINOVITZ: That's correct.

DOUGLAS MYERS: And for that reason you're saying that placing of pavers there could not be a repaving -- just that's what you're saying?

ATTORNEY EDWARD RABINOVITZ:

Exactly. Because in fact it wasn't paved at the time in 2010 when you issued your decision.

DOUGLAS MYERS: And there was no -- you're saying there's no macadamized material, old broken up asphalt or anything there that would be a basis for a present repaving; is that your position based on the evidence?

ATTORNEY EDWARD RABINOVITZ: Yes. And the bottom line is why would they be asking now to pave it if it was previously paved? Why didn't they do it way back when? It was never paved. They had to take down those trees first. And with all due respect with your suggestion that the agreement has nothing to do with anything, they agreed not to remove trees. They agreed to replace

trees if in fact those trees died within two years of their doing their work. So I would suggest, I would suggest that their attempt to now remove -- do some self-help, remove those trees and now claim there was paving underneath is just patently not possible. Those trees are 15 to 20 feet high. The arborist said they were there for 10 to 20 years and that was not paved where those trees were growing. It's as simple as that.

DAVID TELLER: Can I make one other comment about the paving? We had discussions with the developer about paving and said, you know, you can't pave that section of the driveway when they were proposing to do it. Before they had dug any of it up or anything. If there had been asphalt there, they would have taken pictures of it. They did not. You know, the pictures

they have are pictures of after they put gravel and stuff down. If there had been evidence that there was paving there, we gave them the decision, the variance. We gave him our private agreement. He would have taken pictures of it. He's a smart guy. If he wanted to pave that area and it had been previously paved, and based on the variance he could say this was previously paved. He would have taken pictures when they were digging it up. He didn't. Therefore, I conclude that it was not paved and he had no evidence of it.

JIL-ANNE BAILEY: When we spoke to Martin and Lauren last fall about this, I mean we spoke to them before any of this ever started with the driveway. We went over and handed them the decision, the Variance decision with the conditions and our side

agreement and said this portion is not to be paved. So they were informed before any of the work started.

ATTORNEY EDWARD RABINOVITZ: And if you look at the pictures, it's clearly not paved where those trees are. The statement in the record here is paving exists. We may redo that paving with pavers. We're not going to add parking. What they're trying to do is now create a further area that they want to pave. And in aid of that they took out the trees. They just unilaterally removed the trees. If in fact they are correct, they didn't have to remove the trees. They would have still parked right where the trees were. Why did they take them out? They took them out because they couldn't park there and they want to now park there and pave it. Because if they could park there when the trees were

there, as they allege, they didn't have to take those trees out. And those were mature trees. This isn't scrub bushes as somebody tries to describe it. You look at those pictures how big those trees are. They didn't have to take those trees out. If, in fact, what they claim is they were parking there all along. They were never parking there all along. They physically couldn't park there all along. Two objects can't exist in the same place at the same time. They took the trees out and now they're trying to convince you that somehow they were parking there.

DAVID TELLER: Can we go back to where they were parking? Because in fact they were parking two cars there. And Willits, in fact, said that they were. They were parking one of those cars in the right

of way area. Those were the two spaces they were parking. That's where they were parking two cars. And they've been doing that, you know -- and frankly they're still doing it now, so --

ATTORNEY EDWARD RABINOVITZ: We have a picture with three of them. Three cars.

DAVID TELLER: Four even.

JIL-ANNE BAILEY: They've been parking two cars in tandem behind the trees since they moved in. And then once they took the trees out, they've still been going back because Sean O'Grady and David Burne said you can't pave this portion because it wasn't paved before. And then that's how all of this stuff with you guys started. So sorry to keep beating a dead horse.

CONSTANTINE ALEXANDER: No.

Mr. Bram, you've been waving your hand frantically. Wait, wait, wait.

ATTORNEY ANDREW BRAM: Sorry.

CONSTANTINE ALEXANDER: No. Come on up. We don't usually -- we usually close public testimony, but given the controversial nature of this case and the he said/she said aspect of it, I'm going to give you one more opportunity to speak and that will be it. And you'll have an opportunity to respond to whatever he says and that's it.

ATTORNEY ANDREW BRAM: The only thing that he said is that the picture that Jil Bailey's pointed out here is a canopy picture of this tree. The trunks of these trees where we said they were and there's been no dispute and I don't think you're going to dispute where these trunks would be when the pictures were taken in 2010. And there was

paving here. And the testimony you have is Marty Hill's testimony, my client's testimony, the architects, all people that saw this in 2010. Mr. Rabinovitz, okay, I doubt if he's even been on the property. And if he has, he certainly wasn't there in 2010. And yet he sits here and says over and over again there was no paving, there was no paving, there was no paving. He can't testify.

CONSTANTINE ALEXANDER: Wait, wait. He's not testifying. He's an attorney arguing for his client.

ATTORNEY ANDREW BRAM: He thinks if he says it enough times, it becomes a fact.

CONSTANTINE ALEXANDER: No, no, no. Come on. Stop, stop, stop.

ATTORNEY ANDREW BRAM: Okay. There was paving there, and the statement was made

that if we thought there was paving there, why didn't we take pictures? Why didn't we just pave this area? Okay? That's exactly what we intended to do. It wasn't until these individuals went to the Building Department and said, oh, there's a problem. We don't think they can park there. We don't think they can pave that because of our agreement. That Mr. Singanayagam said well, you better not pave it. You better go back to the Board first. We fully intended to do this. Didn't think we needed to take pictures of broken up asphalt that we intended to complete this paving from the beginning. So that's all I have.

CONSTANTINE ALEXANDER: You feel a need to respond to that?

DAVID TELLER: Yes, I want to speak.

CONSTANTINE ALEXANDER: I want to

bring this case to a conclusion, sir. Unless you have something -- Mr. Rabinovitz needs to speak. Unless you have something significant you're going to add, please.

DAVID TELLER: The one thing I just wanted to say was that we had spoken to Martin Hill and Lauren and Martin before they paved or did any work on the driveway and told them. So they knew we objected to it. And if there was evidence that it had been paved, don't you think they would have taken pictures and preserved that evidence? That's all.

ATTORNEY EDWARD RABINOVITZ: We don't have to speculate, and with all due respect, I wasn't suggesting that I personally would vouch for having dug down whether there was paving or not. We don't have to speculate. If you look at picture G1, there's asphalt that's cracked and then

there's dirt beside it. It's as simple as that. It wasn't paved. Where the tree trunks were was not paved. It's dirt. And I would suggest that the bias or the -- whatever is causing the contractor to suggest otherwise is part of the fact that he wants to add in paving for everything and have this area that they've now cleared out be completed with pavers. The pictures don't lie. It wasn't paved. And they want to add pavers. It's a very simple question. Your order says no further paving, no further area shall be made within an impervious surface now or in the future or turned into a parking area. You can't turn an area that was covered with trees into a parking area. That's what the order says. That's what they're trying to do. They took down the trees and they want to now park there.

I would respectfully suggest that you overturn the decision that somehow that was where they were parking at the time, which I think is the factual issue that the Commissioner was supposed to be determining.

CONSTANTINE ALEXANDER: All right, thank you.

Okay, I'm going to now close public testimony and I think it's time, certainly is time for this Board to deliberate.

Anyone wish to express some views on this case?

BRENDAN SULLIVAN: Well, I sort of know how Solomon felt when he had two women claiming the same baby. I suspect that there probably was paving there, but I also suspect that there were trees there. It may not have been intentionally planted there, but they were there. So I think that it was

impossible to park a car in that area.

During the development, during construction, those trees became inconvenient because it restricted the amount of parking and the maneuverability of the adjoining properties, so they came down. I think they added some streetscape. They added some amenity to the view. They also may have added some absorption of the properties. I don't know. But there probably was some paving possibly up there and got broken up over a period of time. But that no cars could have parked there. Unfortunately, I think in our focus way back when we were focussed on the addition --

CONSTANTINE ALEXANDER: That's right.

BRENDAN SULLIVAN: -- and that this sort of literally flew under the radar and now

it's under the microscope. But I -- and it may have been overlooked or passed by. But I don't know how you can draw a conclusion on it. I think the trees became inconvenient and that that's why they came down. And that the -- they could not have parked there, but now the parking has been expanded into that area.

CONSTANTINE ALEXANDER: So do I take it from all that you would vote to grant the appeal and to reverse the decision of the Commissioner?

BRENDAN SULLIVAN: On the basis that there probably was no parking there before because it was impossible to park there before because there were trees in that area. And as the architect, the gentleman said, that when he first came there, he parked up pretty close to the fence. I mean, when I

look at this picture here, which is pretty evident to me that you cannot park close to that fence, and that he has scratch marks on his hood. And I'm saying why? Why would you do that? But anyhow, this here looks -- shows me that there is quite a buffer between the fence and the trunks of that tree.

CONSTANTINE ALEXANDER: Okay.

Anyone else wishing to -- no one has to -- but does anyone wish to comment?

SLATER ANDERSON: Well, I didn't hear the first case, but you know, reading through some of these materials -- and the first case going back to the addition, which obviously the focus of that hearing was about the addition. And the parking seems -- the focus of the concern about the parking, the parking not being in the yard. But the parking, what seems to be expressed here, is

that there was an intent that the owners would be parking two cars on their property, okay? So -- and the Commissioner seems to be saying that they can park the two cars on their property as the decision, the original decision had expressed. What's not clear to me is where the -- where you're fitting two cars if they can't be up towards the fence? Because we're talking about 32 feet here. You can't get two cars into less than 32 feet. So if you go with your position on it, you're not parking two cars on the property anymore in a tandem circumstance I think looking at the site plan. So it's not clear to me where the cars go if you're not allowing the cars to be up further near the fence. And I don't, you know, like I said, I wasn't involved in the original case, but --

BRENDAN SULLIVAN: I think the

original claim was that they were able to park two cars there. So we allowed them to continue to park the two cars.

SLATER ANDERSON: That seems to be what's stated.

BRENDAN SULLIVAN: But without getting out there and sort of marking the hows and whens. Basically the Board was saying, fine, you can park two cars there now. We will allow you to park two cars there. But could not, as counsel keeps saying, and it resonates with me, cannot park on top of the tree.

SLATER ANDERSON: Well, I think if this plan, which I think was submitted in with the 2010 approvals, I mean it was clear that to get two cars on to this property, not in this right of way, not in the right of way box, you have to use up a lot of that 32 feet which

includes where those trees are. So that's what's not clear to me.

ATTORNEY EDWARD RABINOVITZ: They were in the right of way. That's where they parked.

SLATER ANDERSON: But it seems there's some expression in here and from your excerpts talking about Mr. Bram says he has two cars and he has two parking spaces. We park here. Right of way that was missed now and turned about... (reading.) Is the block that she's right of way because she's parking is over here. And it goes on to say that we are parking ahead of this for two cars, that's where we park. That's where we park now and that's where we'll continue to park. And I don't know if that means that they're parking on the right of way or parking on the lot. That's not clear to me. I mean, I'd have to

go through it I guess and understand that further, but I can understand your position of basically, you know, your concern. And the drainage thing, I think they've made a big effort on the drainage. And I don't think the removal of the trees is a drainage issue. The removal of the trees is a privacy issue. That's what we're talking about here. We're not talking about a drainage issue. In my opinion.

DAVID TELLER: Am I allowed to answer that?

CONSTANTINE ALEXANDER: No, I'm sorry.

SLATER ANDERSON: I haven't heard anything that says to me this is a drainage issue. The trees, yes, absorb water. And evergreens do it throughout the year more than a deciduous tree might. But what I see

is that it's a privacy issue. You know, looking as you said, the trees screen the cars. Trees are gone now. Privacy's a big issue in a tight urban environment. I get that. So, I would like, you know, I don't know -- it's not for us to legislate today how this gets resolved with trees going back to create the privacy and the cars ending up on the lot part. But, you know, what we're here to do is either hold up the appeal or reverse the appeal.

CONSTANTINE ALEXANDER: Right.

SLATER ANDERSON: Or the Commissioner's determination. So I'm -- I don't know, I am inclined to support the Commissioner's position on this. I don't have enough here to resolve it myself.

CONSTANTINE ALEXANDER: Okay, thank you, sir.

Anyone else wish to speak? You don't have to again. Go ahead, I know you want to speak.

DOUGLAS MYERS: No, no, I'll be brief. I find it a very difficult case. I assume we're reviewing the Commissioner's decision de nova. We're listening to the same evidence. We're deciding whether the Commissioner was right or wrong.

CONSTANTINE ALEXANDER: Yes, that's correct.

DOUGLAS MYERS: So unfortunately, I mean especially when viewed in hindsight, the language that the Board used is imprecise. It's just a little imprecise. And so our job really is to interpolate and apply that language that we expressed then when our focus was -- I wasn't a member of the panel, but when the Board's focus was on other issues

and apply it to the facts that exist now, and it seems to me that with the critical words really are the current two space parking area. And I really think that -- and because that's where repaving was permitted. And I think probably what the Board had in mind was not entirety of the area where parking might be -- might occur as a matter of legal right, but they had in mind, in the case that was before them at that time, the places where the cars were then parked. And, therefore, I think that -- I think the trees are more or less irrelevant. The question is whether the area where the trees were is somehow protected, is unpaved, and can't be repaved. And as I weigh the circumstances and realizing that the Commissioner gave it very careful attention, I just have to say that I would reach a different conclusion and,

therefore, I would conclude that the Commissioner's ruling was erroneous and I sustain the appeal.

CONSTANTINE ALEXANDER: Tom, do you have any comments?

THOMAS SCOTT: Without repeating everything what you just said, I'm in agreement with Doug. So that's just my feeling on it.

CONSTANTINE ALEXANDER: In agreement with Doug?

THOMAS SCOTT: Yes.

CONSTANTINE ALEXANDER: I was just trying to see what the vote would be for with regard to an appeal. The supermajority four or five or is it a straight majority? Does anybody recall? I'll have to look it up. I think it's relevant to when we take our vote.

ATTORNEY EDWARD RABINOVITZ:

Depending on what your view is maybe.

CONSTANTINE ALEXANDER: I'm sorry?

ATTORNEY EDWARD RABINOVITZ:

Depending on what your view is, maybe.

CONSTANTINE ALEXANDER: Maybe, maybe. But I want to know before -- where are the voting requirements?

Every decision of the Board of Zoning Appeal shall be -- I'm reading from 10.17. Every decision of the Board of Zoning Appeal shall be by resolution adopted by the affirmative vote of at least four members of the Board.

So basically -- and the matter before us is you're appealing his decision. So for us to grant your appeal, four members have to vote in favor of granting that. Do you disagree with that? Because I'm making sure we get it right.

ATTORNEY EDWARD RABINOVITZ: I'm not going to argue with your legal opinion.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY EDWARD RABINOVITZ: We'll deal with it down the road.

CONSTANTINE ALEXANDER: Okay.

As to my view, I'm going to vote to uphold the Commissioner's decision on the grounds that I think he properly construed what we intended, and in fact what we wrote in 2010, in framing the condition that's at issue here.

We were concerned that the parking would be all over the lot or would be at different places of the lot. We wanted to confine it where we thought parking -- we thought parking existed in 2010. You know, to be sure there were trees there, people couldn't park where the trees were located.

But I think that would not be a fair construction of what we intended in 2010. We meant, put it where the parking now is. And if it's going to be slightly to one side or because of the tree or to the other side, that's okay. That's what we were intending. We didn't want a more broader application of parking on the lot.

So I think, to repeat myself, I think the Commissioner got it right because I think he captured in his decision the spirit of what we thought we were approving and the condition we were opposing in 2010.

So with that I think we can actually now go to a vote. I think the vote would be the Chair moves that the decision, that the appeal made by the Petitioners before us tonight, to reverse the decision of the Commissioner as expressed in his letter of

August 1st be granted.

All those in favor of granting the appeal and, therefore, reversing the decision of the Commissioner, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: One, two, three.

(Sullivan, Scott, Myers.)

CONSTANTINE ALEXANDER: Opposed?

(Show of hands.)

CONSTANTINE ALEXANDER: Two opposed.

(Alexander, Anderson.)

CONSTANTINE ALEXANDER: By virtue of 10.17, the appeal is denied.

The reason, and you don't have to agree with me since we're the ones who voted to uphold the decision. I believe that my

statement captured why. I have nothing more that I can add as to why I think the decision, the reasons for our decision or the decision of the vote that we took denied the Variance application -- I'm sorry, the application to reverse the Commissioner's decision.

Thank you very much. It's been a long and contentious time and I appreciate the time and effort you've given to this.

JIL-ANNE BAILEY: Thank you for your time. We appreciate it.

* * * * *

(10:00 p.m.)

(Sitting Members Case #10520: Constantine Alexander, Brendan Sullivan, Thomas Scott, Douglas Myers, Slater W. Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10520, 191 Harvard Street.

Is there anyone here wishing to be heard on this matter?

STEVE TRIEBES: Steve Triebes. I'm the owner of the property.

CONSTANTINE ALEXANDER: You have to

give your name and address to the stenographer, please.

STEVE TRIEBES: Steve Triebes, 191 Harvard Street. And I don't know if I have anything necessarily to say in particular as much as I'm here to answer any questions about it.

CONSTANTINE ALEXANDER: Okay. That's your privilege. But I have questions and I'm sure members of the Board will have questions as well.

And I've seen, I trust the other members of the Board have seen your supporting statement. So you have made your arguments I think for us.

STEVE TRIEBES: Right.

CONSTANTINE ALEXANDER: Up to you. If you want to respond to questions from us. Am I correct?

STEVE TRIEBES: Absolutely.

CONSTANTINE ALEXANDER: Okay.

Well, let me start with an observation and that will lead into certain questions.

In your supporting statement you point out that you were not an automobile rental agency which is a prohibited use in your Zoning District.

STEVE TRIEBES: Right.

CONSTANTINE ALEXANDER: I think if I have it right.

DOUGLAS MYERS: Take a look.

CONSTANTINE ALEXANDER: And in your statement, is it basically to the extent that there Zip Cars parked on the lot in our property is because you may have rented a Zip Car or maybe one of your tenants or whoever occupies the property may from time to time?

STEVE TRIEBES: That's correct,

yes.

CONSTANTINE ALEXANDER: Okay.

The issue, the Zoning issue with respect to your appeal, is not whether you are an automobile rental agency, it's whether the property is being used by someone as an automobile rental agency. And that someone in this case if it's true, Zip Car. And so whether -- and that is the issue. Is it your representation, position to us, that you do not have an agreement with Zip Car to allow Zip Car to rent their cars on your property?

STEVE TRIEBES: I do have an agreement with Zip Car to rent -- they rent from me a portion of my parking area.

CONSTANTINE ALEXANDER: That's the problem you have from -- in my view, certainly, from a Zoning point of view. The property is being used, through your leasing

or your agreement, arrangement with Zip Car, is being used to park leased cars. And in your district, which is a residentially zoned district, that is not permitted. Absent a Variance which is not before us tonight. Which, by the way, if we were to turn you down, you would have a right to bring -- you have a right to still further relief that it will be now in the form of a Variance. And I would tell you just to digress, but for your benefit, the Variance you would be seeking is a Use Variance. Those are very difficult to obtain. We generally do not grant them. Most communities don't grant them, although we have. So you're not foreclosed. If we were to deny you tonight, you still have an area of relief should you want to pursue it. I'm not offering you any encouragement that that would be successful, but I just wanted

to make sure you have -- because you're not represented here by counsel, but you have other relief available to you possibly. That would just be a benefit.

STEVE TRIEBES: Okay. Sorry.

CONSTANTINE ALEXANDER: Go ahead.

STEVE TRIEBES: Okay. Well, first of all, the point I wanted to make is this letter forbids me from parking any Zip Car on my property which means I can't use a Zip Car and put it on my property --

CONSTANTINE ALEXANDER: No, no. I don't think you misread the letter. The letter says that you cannot have an arrangement -- from the proper interpretation of our Ordinance, you cannot have arrangement with Zip Car or anybody else to allow leased cars be park on your property.

STEVE TRIEBES: Okay, that's --

CONSTANTINE ALEXANDER: You rent --

STEVE TRIEBES: That's not what this letter says at all, though.

CONSTANTINE ALEXANDER: Okay.
That's what the Zoning Law --

STEVE TRIEBES: It says to refrain from parking Zip Cars --

CONSTANTINE ALEXANDER: That what the Zoning Ordinance says.

STEVE TRIEBES: -- in my parking lot.

CONSTANTINE ALEXANDER: That's true. You're absolutely correct. The wording is not felicitous. So what I'm telling you now is what the Ordinance says --

STEVE TRIEBES: Okay.

CONSTANTINE ALEXANDER: -- and how we would interpret that decision. You can rent, and anybody who -- you can rent a Zip

Car and park it there while you have the Zip Car under rental. A guest of yours can come in and drive in a Zip Car and park in your lot but leaves it out. What you can't do is have an arrangement with Zip Car where a portion of your lot of your property, may be used by Zip Car and its customers from time to time so that there's always a -- one or two or maybe more Zip Cars parked on your property.

STEVE TRIEBES: Okay. But if I read this law, it has nothing to do with that. It says that it cannot be a rental agency for automobiles, trailer, motorcycles conducting partly or wholly outdoors.

CONSTANTINE ALEXANDER: But the rental agency is what I said before is Zip Car.

STEVE TRIEBES: Zip car is not a rental agency according to them. They're a

car sharing service and they've spoken with the city of Cambridge quite a bit about this. Now, I don't get into their business so I really can't get into that. I'm no expert on that. But that's what they told me very specifically. Under my agreement with them, I don't analyze their business, I say you're welcome to utilize this part of my parking lot and obviously they have to do it in a legally -- in a legal way, but I'm not telling them what to do with that part of my parking lot. So, I am renting out part of my property which I can do.

CONSTANTINE ALEXANDER: Yes, you can do -- but you can't rent your property to an enterprise that is not permitted to operate in a residential district. And the question -- you raise a good point.

STEVE TRIEBES: But they certainly

seem to be --

CONSTANTINE ALEXANDER: I'm sorry?

STEVE TRIEBES: They certainly seem to be allowed to operate in residential districts. They operate exclusively in residential districts.

CONSTANTINE ALEXANDER: I don't think this Board's going to get into other areas of the city. Every area is different, and we're deciding the case before us tonight. The case -- Mr. O'Grady wrote that letter not because he had nothing better to do one day and was driving around and decided to write a letter. There were complaints from neighbors about the disruption to their property or the use of their property caused by the fact that Zip Car is using -- renting -- using your lot for its cars.

STEVE TRIEBES: Okay.

CONSTANTINE ALEXANDER: That's the very thing --

STEVE TRIEBES: I understand that.

CONSTANTINE ALEXANDER: -- that our Ordinance is designed to prohibit in a residential district.

STEVE TRIEBES: Now, my lot is allowed by the city and I'm -- I have 14 parking spaces by city records that I am allowed on that lot. It is a parking lot.

CONSTANTINE ALEXANDER: But you can only use the parking lot for permitted purposes. If you had 14 residents, if whoever rents your property, including yourself, collectively have 14 cars --

STEVE TRIEBES: Obviously the property does not support 14 residents.

CONSTANTINE ALEXANDER: What I'm

trying to say to you is that you have a right to use that lot for parking cars for uses that are permitted in the district.

STEVE TRIEBES: Stood.

CONSTANTINE ALEXANDER: Commercial uses including an --

STEVE TRIEBES: Now, the cars are not commercial cars. They're residential cars that have --

CONSTANTINE ALEXANDER: I know that. That's not the issue. Again, the issue is are you conducting -- is Zip Car an automobile -- I forget the words. The leasing agency, whatever the words are, you're saying --

STEVE TRIEBES: Car sharing service.

CONSTANTINE ALEXANDER: Car sharing. You're saying the city has

recognized it as a car sharing service. There are a lot of reasons why the City of Cambridge might recognize this for one purpose or another. We're a Zoning Board. And the issue before us from a Zoning point of view is that Zip Car's use of the lot, is that the kind of thing that our Ordinance is designed to prohibit? And I -- well, we'll get to the merits yet. That's the issue. It's not you. It's what Zip Car does with respect to your property. And what Zip Car does with regard to your property is proscribed under our Ordinance as an improper use in your Zoning District.

STEVE TRIEBES: And I know you have -- you're under discussions with Zip Car about that quite specifically.

CONSTANTINE ALEXANDER: Not I or as a Board.

STEVE TRIEBES: Well, maybe not you. But I know that Zip Car has told me that they're talking to the city about this, and decisions have not been rendered with respect to them. However, at present they are not considered a rental car agency by the city.

CONSTANTINE ALEXANDER: It could be if we render a decision tonight --

STEVE TRIEBES: The city is trying to decide --

CONSTANTINE ALEXANDER: -- if we uphold the -- we deny your appeal, uphold Mr. O'Grady's decision, it could be that the Ordinance will be changed in the future. In which case -- and to permit what by theoretically we prohibit tonight or what Mr. O'Grady says violates. In that case you can do it. But we're talking about the Ordinance as it's written now and that's what

it's all about. And it's this use --

STEVE TRIEBES: But I'm talking about the city's interpretation of Zip Car.

CONSTANTINE ALEXANDER: The city's interpretation is a broad range of purposes within the city. Our issue is with what is -- what we think is the correct Zoning approach to what Zip Car does. And I got to go back to what I'm trying to allude to. You got a residential neighborhood.

Parking -- using for a car rental agency, and I'm going to call it that, to park a series of cars, cars coming in and out, maybe at all hours of the night, is disruptive to a neighborhood. That's why our Ordinance was drafted the way it was. I think to say well, the city puts a different set of words than what's in our Ordinance is, simple. To me it's not relevant to what Mr. O'Grady's

decision in our determination tonight.

BRENDAN SULLIVAN: To me it's running a commercial enterprise that is intended for residential use.

CONSTANTINE ALEXANDER: Yes, that's what it comes down to.

DOUGLAS MYERS: And the car sharing to me in the context of this Board and our Ordinance is hair splitting. The functional equivalent of parking rental cars, cars that are rented for short term use as part of a commercial enterprise in a residential neighborhood.

STEVE TRIEBES: Okay. But if so, what I would say is that the issue that you might have is then to speak with Zip Car about their business and to say that they might not be able to --

DOUGLAS MYERS: Zip Car's issue is

to speak to the city about this Ordinance.

STEVE TRIEBES: And they are doing that.

CONSTANTINE ALEXANDER: Okay.

DOUGLAS MYERS: That's absolutely fine --

STEVE TRIEBES: But the Ordinance at present doesn't cover them is the point. That's what they've said.

DOUGLAS MYERS: We've applied the Ordinance as best we think it applies as covered according to its language in our past practice. That's what we do.

CONSTANTINE ALEXANDER: If Zip Car is successful and gets the Ordinance changed --

DOUGLAS MYERS: We don't speculate about what Zip Car's internal definitions are.

STEVE TRIEBES: I understand that, but I'm talking about the City's definition. In particular, there was a discussion before the Zoning Board --

DOUGLAS MYERS: Whatever the City's definition is it hasn't percolated or permeated into the Ordinance that we are required to apply.

STEVE TRIEBES: In 2009 there were discussions in the Zoning Board about Zip Car in particular and trying to limit them from actually parking their cars in driveways. And they specifically were trying to limit it so that it can only be in a parking lot of the nature of what I have as opposed to in people's specific driveways.

DOUGLAS MYERS: I've trust you heard what I said, and I heard what you said. I think we're threshing old straw.

CONSTANTINE ALEXANDER: Exactly is my point.

STEVE TRIEBES: But I'm talking about what the Zoning Board had discussed at that time.

BRENDAN SULLIVAN: No. You must mean the City Council, not the Zoning Board.

CONSTANTINE ALEXANDER: We have an Ordinance. We interpret it. If the City -- and the City Councilors do often weigh in how we should interpret the Ordinance. We haven't heard anything from any City Councilor. We haven't heard anything official. We do our best job in interpreting the Ordinance. And if the Ordinance gets changed, the conduct that we say can't be conducted now may be able to be conducted tomorrow or next year or next month. But the issue before us is the Ordinance as it's

written now and I'll get to it. I don't see Mr. O'Grady's decision as being wrong. And with the kind of activity that's going on in your lot through the Zip Car arrangement is disruptive to a residential neighborhood, and we have proof of that or testimony to that from the neighbors. The neighbors have explained. That's how Mr. O'Grady wrote the letter in the first place.

STEVE TRIEBES: But no matter what, if they live next to a parking lot, there is going to be parking activity taking place in the parking.

CONSTANTINE ALEXANDER: If the parking lot is a commercial parking lot, they are entitled to say you can't do that. And that's what we're telling you tonight. This is a -- you're using it for commercial purposes. Mr. Sullivan made the point.

You or Zip Car using it for commercial properties or they leased the property or whatever arrangements they have with you to do that. That is not permitted. In our judgment. I think that will be our judgment when it comes to the decision. Not permitted under the Ordinance as it's currently written.

SLATER ANDERSON: It's intensity of use issue. Everyone has a kitchen. Not everyone has a commercial kitchen like a restaurant. And there's a reason why those are Zoned in certain ways, because of the intensity of use is a nuisance in a residential zone potentially, not saying it is in this case. But if it's arisen that someone's called about it, then it's clearly arisen to the level of being a nuisance for somebody in the neighborhood. That's why

the Zoning exists. We're just interpreting the Zoning.

CONSTANTINE ALEXANDER: Yes, I want to make it clear it's not because of the decision -- we render the decision I think we're going to render -- is not because the neighbor complained. It's because how we interpret the Ordinance. What made this case arise in the first place, when Mr. O'Grady wrote the letter, was because of a neighbor's complaint. But after that happens, then it becomes an issue for us to interpret it. If we didn't agree with the neighbor's complaint or we agree with the Ordinance is such that you can do what you want to do, we would just disregard the neighbor's complaints. So I don't want to say this is all we're doing because of the neighbor complaint. That was the triggering

event. Now we have a legal issue. What does the Ordinance mean? And I think you're going to hear it means what Mr. O'Grady says it means. And you cannot conduct these activities, Zip Car using your lot for the purposes for this commercial. Commercial is not permitted in a residential district.

STEVE TRIEBES: Okay, but what I don't understand with the law is that the law specifically says that -- I mean, and this letter says I can't park Zip Cars there. I cannot park them there.

DOUGLAS MYERS: Come on. Come one. The Chairman has said --

CONSTANTINE ALEXANDER: I told you the answer.

DOUGLAS MYERS: -- the letter is erroneous and slightly felicitous in that respect --

CONSTANTINE ALEXANDER: You're not going to go to jail --

DOUGLAS MYERS: -- and he said that's not going to be part of the decision. So let's not belabor the point. Really. There's no point.

CONSTANTINE ALEXANDER: Yes. You rent the Zip Car, you can park it there.

DOUGLAS MYERS: You are an intelligent person and we are not ignorant people. So we understand what you're saying. We treated it and responded to it. What more do you want from us? To go over it five times. Would that be satisfactory?

CONSTANTINE ALEXANDER: Anyway, the hour is getting late and I think we should move on unless you have something new to add to what you've said so far.

STEVE TRIEBES: No, that's fine.

CONSTANTINE ALEXANDER: I'm going to open this matter -- anybody want any questions at this point or public testimony?

I'll open it up to public testimony. Is there anyone wishing to be heard in this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard.

I don't believe we're in receipt of any correspondence in the file. So I will close public testimony.

Are we ready for a vote? I think we are.

The Chair moves that the appeal filed by the Petitioner of the letter for Mr. O'Grady, the decision he reached in the letter dated August 29th be granted. That we grant the appeal.

All those in favor of granting the appeal?

(No Response.)

CONSTANTINE ALEXANDER: None in favor. The motion does not carry.

For the record, the appeal was not granted because what is being engaged in this property is a commercial activity of leasing of cars, leased cars being parked on the lot and such use of this property is specifically for that purpose. It is specifically prohibited by our Ordinance.

BRENDAN SULLIVAN: Section 4.36f under the Table of Uses.

CONSTANTINE ALEXANDER: Yes. I didn't read the section but that's exactly -- thank you, Brendan.

That's the section that prohibits, and this Board has determined prohibits what the

Petitioner has been doing with the property.

BRENDAN SULLIVAN: Correct.

CONSTANTINE ALEXANDER: Thank you
very much.

* * * * *

(10:15 p.m.)

(Sitting Members Case #10521: Constantine
Alexander, Brendan Sullivan, Thomas Scott,
Douglas Myers, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 10521, 1003, Mass. Avenue.

Is there anyone here wishing to be heard
on this matter? Just say it once, please.

Whatever point you're going to make, make it once and don't keep saying it over and over again. You're rarely speechless, Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: There are so many ways I could have responded to that and each one of them would have got me in trouble was my quick conclusion.

Thank you. For the record, James Rafferty appearing on behalf of the Applicant, Riverside Management Group, LLC. Seated to my right is Brandon Woolkalis, W-o-o-l-k-a-l-i-s.

This is an application for a fast food Special Permit to allow for a Dunkin' Donuts franchise to be operated at the subject premises. The building on Mass. Avenue is a block containing a range of commercial retail uses, two-story building. People may recall

it is the former home of the Orson Wells Theatre.

CONSTANTINE ALEXANDER: Yes, I do remember that.

ATTORNEY JAMES RAFFERTY: A thousand and one plays depending on the age group and what you remember there. And so it's had a range of commercial uses. This space is somewhat unique in that if you've seen the photos, it's actually set back from the sidewalk to allow for a stairway access to a lower level. It's actually a two-story retail space.

Mr. Woolkalis is engaged in a joint venture with Riverside Management, which is the holder of a number of common victualer licenses. They operate Dunkin' Donuts, several of them throughout the City of Cambridge. This particular location

represents a --

CONSTANTINE ALEXANDER: I'm sorry. I want the one with the -- I'm sorry, I'm being rude, I apologize. The proposed signage.

Go ahead, I'm sorry, Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: That's okay.

As is noted in the application, this particular franchise represents a relocation from a current franchise about three blocks away at One Bow Street. Riverside Management has operated a Dunkin' Donuts at that location I'm going to estimate for in excess of a decade and their lease is concluding. And they have found this location. It is located in a Business A Zoning -- a business B Zoning District that does allow for -- a Business B2 that does

allow for a fast food use provided the requirements of the 11.30 are met. As close as this location is to Harvard Square, it may be of some significance to certain members of the Board that this is not located in the Harvard Square Overlay District.

CONSTANTINE ALEXANDER: Touche.

ATTORNEY JAMES RAFFERTY: It is positioned outside of it. But it is a neighborhood that has many of the characteristics of Harvard Square. It's a busy commercial street. There is an academic institution across the street. The Cambridge College is located there. There's multi-family housing, there are office buildings that abut it and across the street. So it seems logical that this is the type of location that would rely heavily and primarily on walk-in trade. There is

limited parking there. There is some metered parking in that location, but I think the real test under 11.30 talk about traffic problems, reducing parking, threatening public safety. I would respectfully suggest that the operation three blocks away would be evidence that this operation can occur without any of those things happening. Facing a similar sized operation, this proposed space here is about 1600 square feet which is a few hundred square feet less than the current location at One Bow Street.

There is a track record involved with the operator here. They have a keen understanding of the issues, the impact issues, particularly as the Board knows around loading, around trash, maintaining a clean premises, and the criteria around biodegradable materials and all that. Both

Mr. Woolkalis and the locations where he operates two Dunkin' Donuts?

BRANDON WOOLKALIS: Yes, sir.

ATTORNEY JAMES RAFFERTY: Memorial Drive and in North Cambridge in Mass. Ave. Both of his establishments are places where he takes great pride in. And there's every reason to believe that at this location he'll be able to continue to execute an operation that serves the public, is seen as a neighborhood amenity, and provides an opportunity for people to enjoy the products that have proven to be very popular a few blocks away and frankly throughout the city and the region.

So for those reasons we would respectfully suggest that the Applicant meets the criteria necessary for the issuance of a Special Permit.

CONSTANTINE ALEXANDER: Just one criteria you didn't address and I think it's a sensitive one, issue for this Board, and that is -- I'm reading from 11.31. Where is it? B, B as in Bob. (Reading) The physical design, including color and use of materials of the establishment shall be compatible with and sensitive to the visual and physical characteristics of other buildings, public spaces, and uses in the particular location.

And I know as you submitted as part of your application or as part of the record, this is what the signage is going to look like if we should grant relief?

ATTORNEY JAMES RAFFERTY: Right. And what that's a reflection of is the existing signage that exists. Both of those sign boxes are there now I'm told.

CONSTANTINE ALEXANDER: Now,

meaning Bow Street?

ATTORNEY JAMES RAFFERTY: No, at the premises now.

BRANDON WOOLKALIS: No. This is the location without the signage. That's what there now.

CONSTANTINE ALEXANDER: If we grant you relief, there's no signage there now.

BRANDON WOOLKALIS: It's just the box.

ATTORNEY JAMES RAFFERTY: No. There's the blade sign that's projecting. See they're blank now because the premises is not there.

CONSTANTINE ALEXANDER: Oh, I see.

ATTORNEY JAMES RAFFERTY: In fact the box is there now. What happened is when the prior operator/tenant moved out, so it doesn't trigger any change in signage. So a

new panel, if you will, goes into those projecting sign.

CONSTANTINE ALEXANDER: You're not planning any kind of coffee cup protruding like we've seen elsewhere?

DOUGLAS MYERS: Will the sign be illuminated?

BRANDON WOOLKALIS: I believe it is illuminated. I don't know --

ATTORNEY JAMES RAFFERTY: Whatever the existing conditions of the sign is. The only proposed change in the sign is to insert the sign panels.

CONSTANTINE ALEXANDER: But the panels will be these colors?

BRANDON WOOLKALIS: That's correct.

CONSTANTINE ALEXANDER: And this wording or design?

BRANDON WOOLKALIS: Yes, sir.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: I think the wording is essential.

CONSTANTINE ALEXANDER: I think that's true, but it's not -- nothing else?

ATTORNEY JAMES RAFFERTY: No, and I understand the point. And the application is silent and doesn't seek any relief from the sign ordinance. But in this case, because of the history of retail uses there, there is an established sign package on the building. So in terms of the question of compatibility, this is the signage -- there's an Indian restaurant located next-door which has the same combination of blade sign and wall sign and there's a few other --

BRANDON WOOLKALIS: Most of the spaces are empty right now but you can see the --

ATTORNEY JAMES RAFFERTY: You can see a hair salon has the similar sign.

DOUGLAS MYERS: And do you know if any of the other protruding signs are illuminated?

BRANDON WOOLKALIS: I don't know off the top of my head. I should know. I go by there enough.

ATTORNEY JAMES RAFFERTY: I would imagine they're backlit just from looking at them, which is probably a typical condition for these types of signs.

CONSTANTINE ALEXANDER: Unless my colleagues disagree, when I make the motion to grant the Special Permit, I'm going to condition it on the signage on the property being as in this picture here.

BRANDON WOOLKALIS: Yes, sir.

CONSTANTINE ALEXANDER: Any

problems with that?

ATTORNEY JAMES RAFFERTY: Well, having sat here for the last two and half hours with what's paving and what isn't, I would say whether the size of those letters changes a little, I don't know.

CONSTANTINE ALEXANDER: I meant in terms of color scheme.

ATTORNEY JAMES RAFFERTY: Color scheme and proportions, yes, we're going to rely upon the existing signs.

CONSTANTINE ALEXANDER: Physical proportions -- okay, I'm sorry. Go ahead.

ATTORNEY JAMES RAFFERTY: I would say there currently exists a wall mounted and a blade sign at the location and we intend to rely upon those.

CONSTANTINE ALEXANDER: Same size and color scheme and being what's in here?

BRANDON WOOLKALIS: Yes, sir.

ATTORNEY JAMES RAFFERTY: Okay.

But will it be on a background, might it be on an orange background?

BRANDON WOOLKALIS: Usually it's on a white, yeah.

CONSTANTINE ALEXANDER: Anyway, I still think it would be appropriate. And I don't think --

ATTORNEY JAMES RAFFERTY: No, I understand the point, but I guess how literal one -- I think dimension --

CONSTANTINE ALEXANDER: You can rely on Mr. O'Grady and the Commissioner not to be too literal with respect to it.

RANJIT SINGANAYAGAM: The signs are viewed by the Community Development.

CONSTANTINE ALEXANDER: I'm sorry?

RANJIT SINGANAYAGAM: The signs are

viewed by the Community Development.

CONSTANTINE ALEXANDER: Oh, yes, I know that. In terms, yeah --

RANJIT SINGANAYAGAM: Even if you agree, they say it's no good, it's no good.

CONSTANTINE ALEXANDER: My only concern, and maybe it's just my own personal animus is that the sign that's reviewed apparently by Community Development for the big tea cup that sits on Church Street, I don't -- that's what I don't want reproduced in my judgment. That's the reason I was trying to tie it to this.

ATTORNEY JAMES RAFFERTY:
Understood.

BRANDON WOOLKALIS: I can give you my word. That's not my store.

CONSTANTINE ALEXANDER: I know that. I realize that. And you've been

before us before.

BRANDON WOOLKALIS: Yes, I have.

CONSTANTINE ALEXANDER: And you've been, by all accounts, a very reputable and operator of Dunkin' Donuts. You have a good record.

BRANDON WOOLKALIS: Thank you very much.

CONSTANTINE ALEXANDER: Anyway, any questions from members of the Board?

DOUGLAS MYERS: Yes. You mentioned the other stores that you operate. I'm having a hard time visualizing the store on Memorial Drive. Where is that?

BRANDON WOOLKALIS: It's where the old Mobil Station is. Right where River Street comes over, the bridge comes over. It has the Citizens Bank in it as well.

DOUGLAS MYERS: Then I think, I

mean, what I'd like to hear more about is the traffic problems that might be associated with this store. I'm -- my question arises out of a certain level of concern that the store directly fronts on Massachusetts Avenue in a way that other Dunkin' Donuts stores in Cambridge really do not, including the store at Bow Street which has one or two parking spaces immediately in front of it, and they're frequently occupied by people swinging in that patronize Dunkin' Donuts which is understandable and proper. But I am concerned about the level of usage and possible disruption of traffic on a busy street like Massachusetts Avenue which directly fronts the store. And the point of my previous question is to say that this is unlike the situation, to the best of my knowledge, of any other Dunkin' Donuts store

in Cambridge where, to the best of my knowledge, including Porter Square where there's a shopping center parking lot and there's no direct frontage, the doors open into the parking lot of the shopping center. Be that as it may, Massachusetts Avenue here is in a class by itself. It's a straight chute. There's a lot of traffic. There are crosswalks, there's a university. It's very busy. And taking the requirements of the Ordinance seriously, I would like to know what particular attention you have given to the disruption of traffic, the possible increase in minor or possibly injurious traffic collisions that would arise out of patrons of this store frequently stopping during morning rush hour to purchase your product?

ATTORNEY JAMES RAFFERTY: Well, I

would just say just in terms of context, I would suggest that this is perhaps not as unique as has been suggested. There does exist in Central Square a location that fronts onto Massachusetts Avenue. The store that Mr. Woolkalis operates in North Cambridge fronts onto Massachusetts Avenue. There are two stores on Broadway which has similar characteristics, heavily traveled arteries. I would suggest that this is the very Zoning District and very type of location where uses like this are encouraged. There's ample short-term parking by way of meters. In some cases they're only 30 minutes long. There's restricted parking on the side street. So non-residents cannot take advantage of or encroach into the residential parking. It's a heavily trafficked pedestrian area. It's within a

few blocks of -- probably a five or ten minute walk to either Central Square or Harvard Square. And it's in a rather dense residential area. It's surrounded by hundreds of residential units, all of which people, customer demographic suggest, tend to come here in the morning and those people are leaving their homes. In many cases the student population at the college across the street, I think there's ample evidence up and down Mass. Avenue of uses. I don't think in some cases Dunkin' Donuts proves to be very popular. But it's certainly not unique in its appeal. There are other operations. There are Starbucks. I apologize for mentioning them. But along Massachusetts Avenue. There are other coffee uses. So I understand the concern, but I actually think it's an area that has a bit more loading. The

entire -- there's probably, and I know he there's another proprietor here tonight, there's probably more of a loading area on Mass. Ave. in front of this building than there is at the current Bow Street location. And it is two way traffic. The Bow Street location only has Mass. Ave. going in one direction. So I would think that if someone is looking to pull in here, there is, there's metered parking on both sides of the street. And at that hour of the morning I can say from personal testimony I use the dry cleaner on that block, and I never have a problem getting a meter and going to the dry cleaner in the early hours of the morning. It's actually traffic at that location, while it's heavy, the metered parking doesn't, isn't heavily in use at seven, eight, nine o'clock in the morning.

DOUGLAS MYERS: I hear you and I'm not, my level of concern does not arise to a statement that the, that the presence of a Dunkin' Donuts at that location will endanger the public safety. But I am concerned that I just, somehow I see Massachusetts Avenue as different in that area. Maybe Broadway roughly comparable, but it's just the type of street if people double park, which could happen on Broadway I suppose, but it could happen -- I'm just concerned. I just want to state my concern. I've listened to what you've said and I just want to state my concern that I think that this is something that --

ATTORNEY JAMES RAFFERTY: The building, the abutting premises had a very popular fast food restaurant called Il Panino. A high level of take out; pizza and

subs like that. And I have to say that I think the greatest parking violation might be the extent to which people park in loading zones without the proper authorization. But I think that double parking on that stretch, it just, as I said, there's an operator of a restaurant and we've been talking with him who's been here tonight who's a long time operator of a restaurant, of the liquor store there. And he's very supportive. I don't want to speak for him. But he thinks the morning activity on those blocks, which is the high demand for this, which is actually quite, quite low in terms of parking.

DOUGLAS MYERS: Okay.

CONSTANTINE ALEXANDER: Any further questions?

SLATER ANDERSON: I would -- just point of clarification. The North Cambridge

Dunkin' Donuts location has a parking lot with it even though it fronts on Mass. Ave.

ATTORNEY JAMES RAFFERTY: Oh, I agree. I was really responding to the idea as to whether people -- I would say that --

SLATER ANDERSON: I agree with all your other points.

ATTORNEY JAMES RAFFERTY: Well, and I agree with that, there is a parking lot there. But I --

CONSTANTINE ALEXANDER: Thank you, Mr. Rafferty.

I'm going to open it public testimony. Is there anyone here wishing to be heard in this matter? Yes, sir.

KIRIL ALEXANDROV: I have to speak up on behalf of my wife or she'll kill me.

CONSTANTINE ALEXANDER: Give your name.

KIRIL ALEXANDROV: Kiril

Alexandrov, K-i-r-i-l A-l-e-x-a-n-d-r-o-v.

She's addicted to the French vanilla flavoring at the Bow Street location, and very happy that you guys are trying to keep it in the neighborhood. Our offices are at 1151 Mass. Ave. So we're constantly walking passed that location which is looking desolate and empty for quite a long time. So I hope this will bring some life into the area and keep my wife happy so she doesn't have to go all the way down to JFK Street or the Central Square location to get something.

In terms of traffic and parking in that area, there's a Dominos Pizza literally 30 feet away or something like that? So I don't think you guys are gonna hit that kind of volume with drivers, you know, driving in and out and stuff like that. And quite frankly,

there's been some near miss accidents in the Bow Street area because that's such a tricky intersection with tourists come through there, tour busses, busses coming through. I know pulling over there a couple times to pick stuff up, I almost got hit a couple times. So I'm glad you're leaving that place. Probably you guys are not, because it's such a great location. But I have to speak up on behalf of my wife or she'll kill me.

CONSTANTINE ALEXANDER: Thank you, sir.

Anyone else wishing to be heard?

STEPHEN CAPSALLIS: I'm here on behalf of this gentleman here.

ATTORNEY JAMES RAFFERTY: Give your name.

STEPHEN CAPSALLIS: Stephen

Capsallis (phonetic). I own 991 Mass. Ave. I also live there. I also own the two businesses there. And I can tell you from being a business in that location, my family for almost 100 years, across from City Hall and now at 991 since 1979, that there won't be any problem with double parking. I never see it. I'm always looking to park my car, so I can tell you that won't be a problem. I think mostly 90 percent of his business will be foot traffic business. And that's what we rely on in our business there, and we cater to the neighborhood. We think that we're good neighbors and a good neighborhood place there and I think that it's going to enhance the neighborhood. I also talked to a few of our neighbors that live and own houses on Dana Street and they're all very -- I was asking them -- I told them I was going to be down here

tonight supporting this. And I said if you have a problem with it, let me know now. And everyone that I spoke to was very, very supportive of it. I think it would be good to have somebody in that location because it's been vacant for a long time, and I think that the people are constantly asking me is it -- where can I get a cup of coffee around here? And you really can't get a normal cup of coffee in the neighborhood and I think he'll provide that for us.

Thank you very much. And I hope you consider the application.

CONSTANTINE ALEXANDER: Thank you for taking the time to come down.

Sir, you want to speak?

FRED FANTINI: Yes, thank you. I'm Fred Fantini (phonetic). I want to speak in favor of the move, change in location.

Brandon is my cousin and I wouldn't be speaking, but I think of him more of a nephew. But the two stores he runs are run very well. They're run like a family store. He gives back to the community. I actually went to Cambridge College. I actually attended -- I actually went to Orson Wells Theatre many times. Used to eat probably once a week at Il Panino's. I know the area well. It's a lot of walking traffic, and I think it would be a good amenity in that area and I think he'll do a great job in that area.

CONSTANTINE ALEXANDER: Thank you for taking the time.

Is there anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishing to be heard. We are not

in receipt of any letters that I can see in the file or any communication from the Planning Board. So I'm going to close public testimony.

Anything else you want to add?

ATTORNEY JAMES RAFFERTY: No, thank you.

CONSTANTINE ALEXANDER: Discussion or are we ready for a vote?

Ready for a vote. Okay.

Unfortunately we've got to make a lot of different findings with regard to fast order food establishments, so it's going to take a little bit of time.

The Chair moves that this Board make the following findings: That the operation of the proposed Dunkin' Donuts will not create traffic problems, reduce available parking, threaten the public safety in the streets or

sidewalks or encourage or produce double parking on the adjacent public streets.

In this regard I think it's common knowledge that most of the traffic that will be -- most of the people who will be using the premises or the store that you'll be operating will be there by foot and, therefore, people -- that should avoid the traffic problems.

That the physical design, the establishment will be compatible with and sensitive to the visual and physical characteristics of other buildings, public spaces, and uses in the particular location.

In this regard the Chair is going to suggest the imposition of a condition that will assure that that requirement is being met.

That the establishment fulfills a need

for such a service in the neighborhood or in the city. And as has been public testimony there is a need for a place where you get an ordinary cup of coffee. And this -- certainly this establishment will fulfill that need.

That the establishment will attract patrons primarily from walk-in trade as opposed to drive-in or automobile-related trade. And I think I've already addressed that. I think that's the history of Dunkin' Donuts in locations such as being proposed.

That the establishment shall, to the greatest extent feasible, utilized biodegradable materials in packaging the food and in the utensils and other items provided for consumption thereof. And it's your testimony I trust that you will be using biodegradable materials?

BRANDON WOOLKALIS: Yes.

CONSTANTINE ALEXANDER: That the establishment will provide convenient, suitable, and well-marked waste receptacles to encourage patrons properly to dispose of all packaging materials, utensils, and other items provided with the sale of food.

What are you proposing to do with regard to --

BRANDON WOOLKALIS: We always have a trash can outside. And we also do travel pass every hour on the hour to make sure, you know, sometimes customers drop, you know, paper, bags, or whatever. And if you look at the other stores we run, it's -- there is --

CONSTANTINE ALEXANDER: I think in keeping you will have a receptacle outside --

BRANDON WOOLKALIS: Yes, absolutely.

CONSTANTINE ALEXANDER: -- as well inside.

BRANDON WOOLKALIS: Yes.

ATTORNEY JAMES RAFFERTY: I think his representation was that his employees go out to the sidewalk and pick up trash once every hour.

CONSTANTINE ALEXANDER: Oh, you're not having a receptacle?

BRANDON WOOLKALIS: Oh, now, we'll have one.

CONSTANTINE ALEXANDER: I don't think, in my judgment, you're not responsible for cleaning the streets because your customers litter the area. That's not the issue. As long as you provide something for the customers to dispose of it, you've satisfied your obligation in my judgment. And you said you're going to do that.

BRANDON WOOLKALIS: Yeah, we still do that.

CONSTANTINE ALEXANDER: And the establishment complies with all state and local requirement applicable to ingress, egress, and use of all facilities on the premises for handicapped and disabled persons?

BRANDON WOOLKALIS: Yes. ADA.

CONSTANTINE ALEXANDER: You're going comply with all the state and local laws and that for people with disabilities?

BRANDON WOOLKALIS: Yes.

CONSTANTINE ALEXANDER: Okay. We have to make further findings with regard to -- generally with regard to granting Special Permits. That -- and some of these we've already touched on but I'll repeat them because I have to.

The traffic generated or patterns of access or egress will not cause congestion, hazard, or substantial change in established neighborhood character.

That the continued operation of or development of adjacent uses will not be adversely affected by the nature of what you're proposing.

In fact, I think there's testimony that there will be a help, not -- beneficially affected by what you're proposing to do.

That no nuisance or hazard will be created to the detriment of the health, safety, and welfare of the occupant or the citizens of the city.

And that the proposed use will not impair the integrity of the district or otherwise derogate from the intent and purpose of this Ordinance.

On the basis of all of these findings, the Chair moves that we grant the Special Permit being sought on the condition that the signage with regard to the property be as set forth on a sheet that's submitted -- I'm not finished yet -- submitted by the Petitioner. And by that I mean in terms of the blade sign and the protruding sign.

BRANDON WOOLKALIS: Yes.

CONSTANTINE ALEXANDER: The dimensions will be as they are today.

BRANDON WOOLKALIS: The same.

CONSTANTINE ALEXANDER: And what is within the framework of the sign will be generally consistent with what you show in your plan.

BRANDON WOOLKALIS: Yes.

CONSTANTINE ALEXANDER: Namely the colors and the nature of the text within the

sign.

BRANDON WOOLKALIS: Yes.

CONSTANTINE ALEXANDER: On the basis of all that, the Chair moves that we grant the Special Permit on that condition.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

(Alexander, Sullivan, Scott, Myers, Anderson.)

BRANDON WOOLKALIS: Thank you very much, members of the Board.

ATTORNEY JAMES RAFFERTY: Thank you.

We're being advised by the Commissioner because the next step in the process is to get a CV license at the License Commission that -- to the issue of seating. The

Commissioner might be benefitted from a reference to the plan.

CONSTANTINE ALEXANDER: Why would they care what we think about the -- we don't really shouldn't be passing on the seating.

DOUGLAS MYERS: I think that's exclusively within the Licensing Commission. Why should we weigh in on that?

ATTORNEY JAMES RAFFERTY: I agree.

RANJIT SINGANAYAGAM: (Inaudible). It's fast food. So if they say 15 seats, they have to sign off on the seating. That's article purposes.

CONSTANTINE ALEXANDER: I think it can be represented by you, Mr. Rafferty, to the License Commission that the Board has, you know, you submitted plans dealing with the seating and that the Board had no problems demonstrated by the fact that we granted the

Special Permit. I loath to get into seating.

DOUGLAS MYERS: That we approved them?

CONSTANTINE ALEXANDER: We approved the Special Permit.

ATTORNEY JAMES RAFFERTY: I think it's probably more a direction for ISD when we --

CONSTANTINE ALEXANDER: Well, okay, that's our direction.

RANJIT SINGANAYAGAM: For the plans.

ATTORNEY JAMES RAFFERTY: For the plan. But I think we're in the 20 seat range here.

RANJIT SINGANAYAGAM: Okay.

ATTORNEY JAMES RAFFERTY: But I see your point. I think historically it's been dealt with the License Commission, but I do

understand the issue.

CONSTANTINE ALEXANDER: Thank you
Mr. Rafferty.

* * * * *

(10:45 p.m.)

(Sitting Members Case #10522: Constantine
Alexander, Brendan Sullivan, Thomas Scott,
Douglas Myers, Slater W. Anderson.)

CONSTANTINE ALEXANDER: The Chair
will call 7A Haskell Street.

Is there anyone here wishing to be heard
in this matter?

IRA HOCHMAN: Hello.

CONSTANTINE ALEXANDER: Good evening.

IRA HOCHMAN: Yes, late evening. I'm Ira Hochman, H-o-c-h-m-a-n. I'm here because Brian could not make it due to travel.

CONSTANTINE ALEXANDER: And you're seeking a Variance to rebuild -- not you but the person you're here on behalf of, to rebuild and reconfigure rear decks for safe access. And your problem is or, again, the Petitioner's problem is that you have some Zoning issues. Your FAR will go from 0.68 to -- no, it will stay at 0.68 but you're in a 0.5 district. So it's already non-conforming.

IRA HOCHMAN: Right.

CONSTANTINE ALEXANDER: You're not going to increase the non-conformance. I think there's a representation that you're

going to decrease it.

IRA HOCHMAN: Yes.

CONSTANTINE ALEXANDER: That's why you're here. And also you have a side yard setback issue. You're only going to be three and a half feet from the side yard -- excuse me, left side. You're not going to get any closer to the side yard, but you're supposed to be seven and a half feet away.

IRA HOCHMAN: It should be -- the diagrams have it at seven and a half plus --

CONSTANTINE ALEXANDER: Seven and a half is what the Zoning Ordinance requires --

IRA HOCHMAN: Right.

CONSTANTINE ALEXANDER: -- minimum. And you're going to be, again, I say you, the person you're here on behalf of will be 3.5 feet.

IRA HOCHMAN: No. The distance should be no less than seven and a half feet from the end.

CONSTANTINE ALEXANDER: That's not what the file says.

IRA HOCHMAN: Oh, okay. That's not according to the plans.

CONSTANTINE ALEXANDER: Anyway --

IRA HOCHMAN: Yeah, sorry.

CONSTANTINE ALEXANDER: I just wanted to get that on the record.

IRA HOCHMAN: Okay, sorry.

CONSTANTINE ALEXANDER: And do you know what the requirements for a Variance are? If so, you better address them. We have to make three -- stop me if I'm just telling you something that you know.

IRA HOCHMAN: No, go ahead.

CONSTANTINE ALEXANDER: We have to

make three findings as a matter of law to grant any Variance.

One, it's got to be a substantial hardship to you in order to grant the Variance.

Two, the Variance -- the hardship's caused by the shape, soil conditions of the lot of the structure.

And three, that granting the Variance you're seeking will not derogate from the intent of our Zoning Ordinance. So you have to address those because we're going to have to address those in our opinion. So why don't you go ahead.

IRA HOCHMAN: All right. So the hardship is in fact that the building is already -- was built before Zoning. So it's FAR is --

CONSTANTINE ALEXANDER: It's

non-conforming. Legally non-conforming.

IRA HOCHMAN: Right. And there's an existing structure there that is -- serves as both the deck for the first floor and is second egress for the second floor. So it needs to still be in place.

The foundation's footings for it are not sound. So the structure's actually sagging as well as wooden elements of the structure also rotting. So to repair it would be simply delaying the inevitable, and it's already a hazardous structure.

So to replace it and create something that meets code because the structure is also built prior to code and has many aspects that don't conform, it called for a footprint that in one corner extends, it's about I think three feet.

CONSTANTINE ALEXANDER: And that's

why the relief being sought doesn't derogate from the intent of our Zoning Ordinance, because you're going to increase the safety of the structure for the occupant?

IRA HOCHMAN: It will be a much safer structure. It's actually more in line with code. We actually reduce the FAR as well. It's just that this one section of the deck, in order to make everything fit, will (inaudible).

CONSTANTINE ALEXANDER: Okay.

Questions from members of the Board?

No questions.

I'm going to open it to public testimony.

Is there anyone here wishing to be heard on this matter? Sir.

DAVE CARPENTER: So I'm Dave Carpenter. I have a unit at 5 Haskell Street

which is next-door to 7-9. And hopefully you received a letter from trustees from my condo association.

CONSTANTINE ALEXANDER: I'm going to read that into the file. There's no need for you to repeat what's in the letter.

DAVE CARPENTER: I just wanted to add my own personal endorsement. I worked with the trustees to put that together. There are four parking spaces in our shared parking lot in the back of our unit, and I own two of them. So I'm myself and my family and my guest spend an awful lot of time back there, in and out and walking around and stuff like that, so this area is of considerable interest. The structure in question is in fact a bit of an eyesore. It's clearly unsafe. And I'm very much looking forward to having it replaced and sort of increasing the

overall appeal of the appearance back there in our shared space. I should also mention we share a driveway off of Haskell Street. So it's a single lane. The trustees and myself all looked very closely at the plans and have no problem about the impact on the shared driveway and that's about it.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one else.

We are in receipt of one letter. I thought we had more, but maybe I'm wrong.

IRA HOCHMAN: I do have another letter.

CONSTANTINE ALEXANDER: I have a letter from Brian Carbone, Christine Riley, Jeffery Wasserman, the trustees of No. 5

Haskell Drive that this gentleman referred to.

Is that the letter you're referring?

IRA HOCHMAN: No, I have for the other abutter on Haskell.

CONSTANTINE ALEXANDER: Why don't you give me a copy of that for the file.

IRA HOCHMAN: Certainly. There you go. Hopefully the handwriting is good.

CONSTANTINE ALEXANDER: I'll try to read it.

The first letter that I referred to is from as I said Brian Carbone, C-a-r-b-o-n-e; Christine Riley, R-i-l-e-y; and Jeffrey Wasserman, W-a-s-s-e-r-m-a-n. The trustees of No. 5 condominium trust. (Reading) We the undersigned trustees of the condominium at No. 5 Haskell Street speaking as authorized representatives of the association of owners

of same, state that we have no objections to the proposed back deck and staircase replacement project at 7-9 Haskell Street. We are direct abutters of 7-9 and share a common driveway between the two buildings. We have reviewed the project plans, including the changes to the footprint of the first floor deck, and are in favor of the project proceeding as soon as possible. The current structure is an eyesore and unsafe. We also believe that the new structure would improve our collective property values and facilitate the implementation of the other mutually beneficial exterior improvements of the owners of 7-9 Haskell Street.

We also have a letter from Mary Ann Kenney, K-e-n-n-e-y. (Reading) I am Ms. Mary Ann Kenney owner of No. 11-13 Haskell Street which is next to No. 7-9

Haskell Street. I have reviewed the proposed back deck and staircase replacement project and have no objections to the design including the changed footprint for the first floor deck. I would prefer that the project begin sooner as the current situation is an eyesore and unsafe. I also believe that the new structure would improve my property value and facilitate other mutually beneficial exterior improvements at 7-9 Haskell Street.

And that's the sum and substance.

That's it in terms of public comments.

Anything else you want to add?

IRA HOCHMAN: Not at this time.

CONSTANTINE ALEXANDER: Questions from members of the Board or comments from members of the Board or proceed to a vote?

We'll go for a vote.

Okay. The Chair moves that this Board

make the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship would prevent the construction of a new safer means of egress to the property involved.

That the hardship is owing to circumstances relating to the shape of the structure. It is a non-conforming structure, and that is the reason why relief is required.

And that desirable relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of this Ordinance.

In this regard, as I mentioned before, what is being proposed will improve the

safety of the structure for the occupants or anyone visiting the structure and that certainly is part of the intent of our Zoning Ordinance and other Building Code requirements.

On the basis of all of this the Chair moves that a Variance be granted to the Petitioner as requested on the condition that the work proceed in accordance with the plans submitted by the Petitioner and initialled by the Chair. They're one, two, three pages. The only ones that are relevant are three pages of plans which I have initialed.

All those in favor of granting the Variance say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: The Variance is granted.

(Alexander, Sullivan, Scott, Myers,

Anderson.)

CONSTANTINE ALEXANDER: Tell your neighbor you did a good job.

* * * * *

(10:55 p.m.)

(Sitting Members Case # 10523: Constantine Alexander, Brendan Sullivan, Thomas Scott, Douglas Myers, Anderson W. Slater.)

CONSTANTINE ALEXANDER: The Chair will next call case No. 10527, 6 Cutler Avenue.

Is there anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair

notes no one wishes to be heard.

Is there a letter in here, Maria?

MARIA PACHECO: Yes.

CONSTANTINE ALEXANDER: The Chair notes there is a letter from Frank Shirley Architects addressed -- dated October 24th.

(Reading) On behalf of my client Victorio Severino (phonetic) and Stephanie Haims owners of 6 Cutler Avenue, I respectfully request of the Zoning Board a continuance of our application to the next available Zoning Board hearing. Our request of a continuance is to allow more time to confer with neighbors most affected by our proposed construction.

When's the next available hearing?

Probably in December, right?

MARIA PACHECO: Want to do 12/5?

CONSTANTINE ALEXANDER: 12/5?

The Chair moves that this case be continued until seven p.m. on December 5th. This being a case not heard, on the following conditions:

That the Petitioner sign a waiver of time for a decision.

That any revised plans that will be considered at our hearing on December 5th be in our files no later than five p.m. on the Monday before.

And on the last condition that the signage be maintained for the period required by our statute with regard to the hearing on December 5th. However, the signage must reflect the new date, December 5th, and new time, seven p.m.

If it's not -- they don't change the time, which people don't do, we're not going to hear the case until 9:15 or later.

All those in favor of continuing the case on this basis --

BRENDAN SULLIVAN: Any new submissions, did you mention that?

CONSTANTINE ALEXANDER: I said -- I did mention that.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

(Alexander, Sullivan, Scott, Myers, Anderson.)

* * * * *

(10:55 p.m.)

(Sitting Members Case #10523: Constantine Alexander, Brendan Sullivan, Thomas Scott, Douglas Myers, Slater W. Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10523, 192 Franklin Street.

Is there anyone here wishing to be heard on this matter?

JAMES ORFANOS: Good evening.
James Orfanos member of 192-194 Franklin

Street, LLC. Address is 50 Hancock Street, Cambridge.

TERRY ORFANOS: Terry Orfanos, member of 192-194 Franklin Street, LLC, 50 Hancock Street, Cambridge.

MARK BOYES-WATSON: Mark Boyes-Watson, Mark Boyes-Watson, architect, 30 Bows Street, Somerville.

CONSTANTINE ALEXANDER: Mr. Boyes-Watson just -- too bad your counsel isn't here. I just want to make one observation just to put you aware of it. One of the relief being sought is open space. You have to have at least 30 percent, and you now have 23 on the current structure, you're going to go to 24 percent. You need Variance along with the other Variances you're seeking. The advisement, that makes no mention of open space. I just noticed that

this evening when I was preparing for this hearing. It does reference the Section 5.31 which is where open space is.

I would suggest that it's -- not the matter is not free from doubt, should we grant the Variance, that someone can challenge on the grounds with respect to the open space, that you didn't properly advertise. You should be aware as you go forward, assuming you want to go forward after what I just told, that you have this potential, potential problem with your petition.

MARK BOYES-WATSON: Thank you for that and I think that we've been consulting with our neighbors and we're comfortable that the 5.31 will survive.

CONSTANTINE ALEXANDER: Your call.

MARK BOYES-WATSON: Thank you.

There's actually a -- there's a Special

Permit and a Variance. I was going to maybe just go --

CONSTANTINE ALEXANDER: The Variance first because that's where the case is going to rise and fall it seems to me.

MARK BOYES-WATSON: Yeah. Well they're -- one of them affects one building, the front building, which is a two-family and the other affects the rear.

CONSTANTINE ALEXANDER: You're talking about the Special Permit for the windows? That's another case. That's the next case.

MARK BOYES-WATSON: That's the next case.

CONSTANTINE ALEXANDER: You want a Special Permit in this case for parking?

MARK BOYES-WATSON: Yes.

CONSTANTINE ALEXANDER: Yes. And

I'm saying don't deal with that yet. Let's deal with the Variance.

MARK BOYES-WATSON: Okay. So, what we have at 192 is that -- Franklin is that we have a front house and a back cottage in the rear of the lot, and the general idea here is that we are not increasing the gross floor area of the, on the site. We're not changing the amount of parking on the site. What we are doing is addressing -- what we would like the Board to grant us the ability to do is address Building Code issues on this existing back house. Existing back house is a small cottage that looks roughly like this. And we are actually exactly replicating its size. We're trying to improve its appearance a little bit. We talked to the neighbors a lot about that, the proponent has. And everybody seems to think that's a good idea.

The aspects of the building that are problematic right now is that the interior ceiling height is just about seven feet, just under seven feet on the first floor and really low also equally on the second floor. So that's well under any of the Building Code requirements. It also -- so, so what we would like to do, because we could address that issue and the proximity to the property line, the Building Code would like a house to be at least three feet from the lot line. Actually it's a fire code issue. And so when we were looking at that and we were looking at these two issues and their intersection of this particular house, it seems really logical, the house is not in good repair, it has these Building Code issues, that we should come here and ask your permission to very slightly shift the house, rotate it away

from that property line, and then which gets us the three-foot setback, and then allow us to rebuild it with the floor-to-floor height a little tiny bit higher.

So basically this thing here illustrates -- I'm going to deal with the two things first. So basically what's interesting is that -- and that's what creates all these Variances. The reconstruction of the house throws aspects of the property, it gets it away from its existing non-conforming status and forces us to come here and say, you know what, will you let us do this? Because it appears that we are creating a non-conforming situation which we are, but by rebuilding in order to mitigate these --

CONSTANTINE ALEXANDER: You should understand, Mr. Boyes-Watson, it's

longstanding policy of this Board is that when someone demolishes a non-conforming structure, you now, have a blank slate with respect to the property. And any new structure has to comply with our Ordinance. You don't get, if you will, you don't get any credit for the fact that you're doing any more than increasing the non-conformance from before. And you've got to satisfy the standard for a Variance as to why we should allow someone to build, in their backyard, a structure as you propose, with the problems that -- the Zoning problems that you have in terms of setback, FAR, you will be well over the FAR, with the structure that you're proposing and also open spaces that are identified. That's the issue I think that we have to wrestle with as a Board.

MARK BOYES-WATSON: Yes, I

understand.

So I guess what we're looking at here is the -- that the -- you could renovate this cottage right where it is and all the same gross floor area issues would pertain.

CONSTANTINE ALEXANDER: Right.

MARK BOYES-WATSON: All the setback issues would still pertain.

CONSTANTINE ALEXANDER: Right.

MARK BOYES-WATSON: The parking would still pertain, and the open space would still pertain. So I think that the question here is I think, you know, because I don't think I would and I think you know I wouldn't come here and say I want to build this house in the backyard of this two-family house. I would never do that. But what we're looking at here is what would be -- what is sensible for the city and in terms of creating

a -- bringing this house up to contemporary standards. We could indeed. We could, if we weren't successful in persuading today, we would have to renovate it as, it would have some persisting Building Code issues that are already there today.

CONSTANTINE ALEXANDER: What would they be?

MARK BOYES-WATSON: They would be the proximity to this setback.

CONSTANTINE ALEXANDER: Right.

MARK BOYES-WATSON: This is where it is, and this is where we propose. It's a very slight -- so if you see, there's a tiny bit of difference here.

CONSTANTINE ALEXANDER: Right, right.

SLATER ANDERSON: What is it that narrowest point, what is that?

MARK BOYES-WATSON: This 1.9 and it goes to three.

CONSTANTINE ALEXANDER: It goes to three. They're going to add another foot.

MARK BOYES-WATSON: Yeah.

CONSTANTINE ALEXANDER: Foot and a couple inches.

MARK BOYES-WATSON: Yeah. So there's that.

And you can see the footprint is identical. There's that. And then when we reconstruct it, we can get -- first of all, we can get a new foundation under it. But we can actually adjust it from the seven foot floor to floor -- seven foot floor to ceiling. It's more like the Code is seven-foot, six. We're proposing to go I think to eight foot floor to ceiling. So we can get that thing shifted up so that, you know, it's a decent

ceiling height when you're in those rooms.

CONSTANTINE ALEXANDER: But, again, you can do that without demolishing and rebuilding the structure. You could gut renovation. But you could deal with the Building Code. I know your setback issue, but within the structure itself you could solve the problem.

SLATER ANDERSON: Yes, but are you raising the roof?

MARK BOYES-WATSON: Yes. No, you would have a height problem. You would have a height problem.

SLATER ANDERSON: He's raising the roof.

CONSTANTINE ALEXANDER: You need a Variance to raise the roof. Thank you.

MARK BOYES-WATSON: Well, actually you could argue that you have that provision

that you can build a second story. I mean, it's ambiguous.

But I think that they -- and I think that they -- and I'm not trying to sort of create a precedent of demolishing things and reconstructing them in a way that's clearly not policy, but the -- I know that you know, for instance, I know there was an interesting case on Maynard Place where you, you actually granted a Variance for exactly these reasons with the ceiling heights for them to raise the roof up and it was appealed.

CONSTANTINE ALEXANDER: A demolition case?

MARK BOYES-WATSON: Well, they didn't demolish the whole building.

CONSTANTINE ALEXANDER: That's the issue you have here.

MARK BOYES-WATSON: Yes, it is. So

I mean our alternative definitely would be to come here with a simpler thing, a simpler ask, which is simply to raise the roof, which is what they did there in Maynard Place. And I, but I'm -- I think that it's such a -- we've been -- they've talked to all their neighbors. This is not a contentious thing. They're used to the house being there. They're looking forward to the changes that are illustrated. I don't want to characterize what any of the neighbors might be thinking. But they're looking forward to this kind of upgrade. And I think that there is a logic to this. And it wasn't -- when we first started this, we weren't going to come here. I usually advise don't come if you don't need to and the Board is, you know, strict on how they review these things. But there seemed to be such an underlying logic

here that I was hoping that it was persuasive that we should be able to make this change. It really -- and it's not an attempt to grab more square footage or anything else. It's very simple. It's a reconstruction. And it has the advantages of helping us meet the Building Codes and upgrade the building.

CONSTANTINE ALEXANDER: Okay.

Thank you.

Questions from members of the Board at this point before I open it to public testimony?

(No Response.)

CONSTANTINE ALEXANDER: No questions?

Is there anyone here wishing to be heard on this matter?

RON FELON: My name is Ron Felon (phonetic). I live at --

CONSTANTINE ALEXANDER: Have you written one of the letters that are in the file?

RON FELON: One of those letters is not mine. I didn't submit one. I came here personally. I own and live at 119 Auburn Street, which is the property directly behind the units in question. So the back cottage building is the one quite close to my property, and I come here in support of the plans that have been shared with me. They've been very open in sharing those plans. I think it's a piece of property that is quite close to the property line and some interesting side effects. And I think it would add a lot to the total property attractiveness in the neighborhood.

CONSTANTINE ALEXANDER: Thank you.

GAIL LANGLOW: My name is Gail

Langlow (phonetic), and I'm adjacent to the property at 196-198. And I also think that it's an improvement to the property, and I -- from what I've seen, I don't think there's any objections to what they're trying to do.

CONSTANTINE ALEXANDER: Thank you.

Anyone else who wishes to be heard?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes that no one else wishes to speak at our hearing. We are in receipt of certain correspondence which I will read into the record.

There is a letter from Eleutherios Yalouris, E-l-e-u-t-h-e-r-i-o-s Y-a-l-o-u-r-i-s and Charlotte Karney. Karney is spelled with a K, K-a-r-n-e-y. Who reside at 188 Franklin Street. (Reading) We

the undersigned neighbors of the property located at 192-194 Franklin Street would like to express our support of the proposed gut, renovation, and reconstruction of the existing buildings that will enhance the neighborhood. We attest that we have no objection to the demolition and reconstruction of the cottage house and to the window changes on the front house -- that's the next case -- as indicated on the proposed plans.

A letter from Larry Papalampros. This is a Greek neighborhood.

JAMES ORFANOS: Yeah, it is.

CONSTANTINE ALEXANDER:

Papalampros, P-a-p-a-l-a-m-p-r-o-s. He resides at 117 Auburn Street. (Reading) We the undersigned neighbors of the property -- it's the same letter that I read

before just a different signatore. I'm not going to read it again.

And we have a letter of Jim Orfanos.

JAMES ORFANOS: That's a letter I reached out to all the neighbors as we were doing the property. I wanted to make sure everybody -- when we were doing this, I made sure I went house to house and met with every neighbor, provide them the letter, asked for feedback. We showed every neighbor, every abutter. I shared the plans with them, sat down with them. You know, heard their concerns. Took their concerns into consideration. This was very much -- I didn't want to in -- it was very much a collaborative. I wanted to make sure that everybody was comfortable with everything we were doing. I spoke to all the neighbors, all the neighbors adjacent to us, and the

neighbor across the street. They were all very supportive of what we were doing. So that was --

CONSTANTINE ALEXANDER: Let me just read into the record the letter from Mr. Orfanos so we have a complete record.

(Reading) We have recently purchased 192-194 Franklin Street in Cambridge with the intent of developing the property into three modern, fully-renovated town homes which will be owner/occupied when completed. Our plan is to renovate the front two-family building into two townhouses while the back building will be rebuilt into a new one-family cottage. Our plan calls for minimal modifications to the existing footprint and structures.

By the way, there will be no changes to the footprint?

MARK BOYES-WATSON: The footprint is moved. When it's moved, it's moved but not changed.

CONSTANTINE ALEXANDER: That's right. That's right.

(Reading) We believe that the project will be a nice addition to the neighborhood when it is completed. Our plan is to present our plans to the Cambridge Board of Zoning meeting in a few weeks. In the meantime, I would like to take the opportunity to share our plans with you. Please feel free to contact me. And there's contact information.

And you've represented that this letter went out to your neighbors. And what's been produced are the letters in support that we have and this gentleman's testimony.

JAMES ORFANOS: And the woman's.

CONSTANTINE ALEXANDER: I'm sorry?

JAMES ORFANOS: And the woman's.

CONSTANTINE ALEXANDER: And the woman's. I apologize.

JAMES ORFANOS: We also received a letter from Charlie Sullivan from the Historical Society.

CONSTANTINE ALEXANDER: Sure.

A letter from Charles Sullivan, the Executive Director of the Cambridge Historical Commission. (Reading) I am writing to support the application of James Orfanos for a Special Permit of the proposed --

MARK BOYES-WATSON: This is actually both. It's actually speaking to the next case, and then the last sentence speaks of this one as well.

CONSTANTINE ALEXANDER: Okay, yes.

The last sentence says: I have found the rear house to be not significant for the purpose of the demolition delay ordinance. And then the rest goes to the main house. So it's basically not a letter of support. It's just telling us that we don't, there's no demolition issues.

MARK BOYES-WATSON: Do we have a second copy of that because it might want to go in the other file as well?

CONSTANTINE ALEXANDER: I'll leave it here if you don't mind.

MARK BOYES-WATSON: Okay.

CONSTANTINE ALEXANDER: That's the public testimony. Anything else you want to add?

MARK BOYES-WATSON: No.

CONSTANTINE ALEXANDER: I'll close public testimony.

THOMAS SCOTT: Can I ask a question?

CONSTANTINE ALEXANDER: Yes.

THOMAS SCOTT: Regarding the hardship as to why we should allow to tear this building down and rebuild it, why -- tell us why you can't just renovate it in place.

MARK BOYES-WATSON: Yeah, so the -- basically owing to the configuration of the existing structure. I have a photograph, for instance, here of what it means to be -- that's the, that's the ceiling condition. So the hardship is owing to the existing structure, and it's an old structure.

CONSTANTINE ALEXANDER: But, again, except for the height issue, you can solve your problems without getting relief from our Board. You have an as-of-right solution

subject to the height issue.

MARK BOYES-WATSON: Yes, we could --

CONSTANTINE ALEXANDER: And it goes back to my initial comment about when you tear down a structure, you have a clean slate going forward, and would we, had there been no structure here in this backyard, would we allow this structure, as you propose, to be built? And that's do you meet the requirements for a Variance to allow to you build that house? And that is the issue before us.

THOMAS SCOTT: We had another case where the house was being proposed to be raised and rebuilt, and some of the significant things that they argued was that the foundation of the building was poor. The soils below the building was poor. And in

order to construct a proper house on the lot they argued that, you know, they had to remove the house, repair or improve the soils and then rebuild.

MARK BOYES-WATSON: We certainly have a -- these houses, this is, you know, in this neighborhood the quality of the construction -- the houses are not young. The front building is one of the oldest houses in Cambridgeport. So we have all those problems. There is no logic from a kind of constructional financial point of view in the reconstruction. There is a huge logic were you to grant this Variance in reconstruction, we're going to have to reconstruct every element of this building regardless. So there's a financial hardship if we can't do that in a logical way and end up with a 21st century configuration that meets the current

Building Code.

BRENDAN SULLIVAN: What is the age of the structure?

MARK BOYES-WATSON: You know, we were just discussing it.

JAMES ORFANOS: We figure it's got to be at least -- we're guessing about 150 years old, give or take.

BRENDAN SULLIVAN: So you're back into the 18 --

JAMES ORFANOS: I have no idea. I'm guessing.

MARK BOYES-WATSON: The front house is 1840s. Whether the back house is as early as that is not clear.

BRENDAN SULLIVAN: So that it was really built at another time for another era, a different type of lifestyle that over the years that it has aged like all of us have

obviously, and that for simple economics is that it would probably be less costly to take the house down, replace it, and you wind up with a better product, a more stable, more amenable house to add to the property, surrounding property values than it would be to try to resurrect and save this house.

MARK BOYES-WATSON: Yes.

BRENDAN SULLIVAN: In a nutshell.

JAMES ORFANOS: In a nutshell.

THOMAS SCOTT: Does it for exceed setback requirements?

MARK BOYES-WATSON: So it is going back where it was, and normally in Res C-1 you would need a 20-foot rear yard setback. So, no, it's fully in the setback. It is today in the setback. We make it ever so slightly better, but it's basically going back where it was.

CONSTANTINE ALEXANDER: And there's a right setback issue as well.

THOMAS SCOTT: Right.

CONSTANTINE ALEXANDER: There are 3.3 feet, continue to be, and it's supposed to have 17.5. You have two setback issues, rear and right.

You have FAR. The FAR will be as it is today, 0.922 in a 0.75.

And then you have open space, you only have 24 percent open space where our Ordinance requires 30 percent. So there's significant Zoning relief being sought here.

MARK BOYES-WATSON: As a result of the -- right, of the reconstruction. It would all be grandfathered were we not --

CONSTANTINE ALEXANDER: To be sure.

THOMAS SCOTT: I guess my point is if it came down and we did nothing more, a lot

of those Zoning issues would be improved.

CONSTANTINE ALEXANDER: Yes, and you'd have certainly open space would be improved.

THOMAS SCOTT: Right.

CONSTANTINE ALEXANDER: And you'd have a backyard for the front structure.

THOMAS SCOTT: Right. I'm just trying to strengthen the argument, you know, to take it down.

MARK BOYES-WATSON: Well, I think that there's not really an option to not take it down and not replace it. The option is to renovate it in place, which the logic of which is contorted. Or reconstruct it. If you reconstruct it, there's a logic of moving it to meet the required Building Code minimum lot setback which is what we were proposing. So it's a logic. And so I -- there's an

intense logic. There will remain a structure there. So we are just, we are asking that we be allowed to do a more logical project. That we'll do all of the good things that Zoning Code encourages in terms of improving and not being detrimental to the -- any neighbors and not causing -- and not causing any harm to anybody. So it's an interesting, I mean, we were just talking about this. I mean, I know how you're looking at this and I totally get it. That it's a question of if -- if let's say we were allowed to reconstruct the building, the question is, you know, who are we harming about that? In talking to all the neighbors, all the neighbors are supportive of the project. It's a very logical way to go about things. To be forced into a sort of archaic -- it's not like there's anything

valuable in the structure. It seems strange to be forced into sort of an archaic contorted renovation when there's no harm where the Board, in my opinion, were the Board to grant this Variance, it seems that there's no substantial difference to the existing condition except that it meets these higher standards that we now live with in the 21st century.

DOUGLAS MYERS: It seems to me the changes in effect in fact are minor. You're rotating the building slightly. The building's going to end up very similar to its present appearance, proportion, bulk except it will be substantially improved in every way. And it's almost as if the demolition is a mere phase to reach the building passes as opposed to the building on Cushing Street which was demolished and then rebuilt in a way

that was substantially in excess of the, of what would be permitted on the lot. Here the building is being preserved in its prior form.

JAMES ORFANOS: That's exact. We're looking to build the same exact building just build it better.

SLATER ANDERSON: It is getting taller. It is definitely getting taller. How many feet, it's hard to tell from the plans.

JAMES ORFANOS: Five feet?

CONSTANTINE ALEXANDER: It should be in the dimensional form. It should be. Let's see.

SLATER ANDERSON: I mean, it's within, you know, you're not looking for height relief.

CONSTANTINE ALEXANDER: Right now.

JAMES ORFANOS: I think it's five feet.

CONSTANTINE ALEXANDER: No. 23 and a half feet high and it will go to 25.3. So it's what, 18 -- one foot, eight inches. And it's --

MARK BOYES-WATSON: Yeah, it's almost exactly five. It's just under five feet tall, right?

CONSTANTINE ALEXANDER: Not according to these numbers. You're now at 23.5.

MARK BOYES-WATSON: Yep.

CONSTANTINE ALEXANDER: And you're going to go to 25.3.

DOUGLAS MYERS: Two feet?

CONSTANTINE ALEXANDER: A little under two feet. And of course the district allows up to 835 feet.

MARK BOYES-WATSON: Yeah, so we're trying to do is -- we're -- this is still a very small -- a very not at a tall structure by the way. It was not at all tall and we're making it -- we actually made it only -- we weren't trying to, for instance, the spring point of the roof, and we put a slight pitched roof that looks so much better. That's the seven-foot, six is the minimum by code.

CONSTANTINE ALEXANDER: Okay.

Other further comments or questions from members of the Board?

SLATER ANDERSON: I'm only -- it seems like it's less. What's the dimensional form say?

CONSTANTINE ALEXANDER: 23.5 now going to -- 23.5 going to 25.3.

SLATER ANDERSON: If you add it up, it looks like 19 feet now.

MARK BOYES-WATSON: Yeah, all of these elevations call it out at 18-foot, six and going to 23-foot, four and a half.

SLATER ANDERSON: That seems like it makes more sense. So explain to me under the less desirable approach of the building doesn't move, rebuild the building, do you want to go higher in its existing location and you have this corner that's one-foot, nine inches. Does the Building Code preclude you from going up in that three feet or is that --

MARK BOYES-WATSON: Well, you're getting into an interesting -- you get into an interesting position between all the Codes in terms of what's grandfathered. And when you're doing a substantial renovation, you're supposed to try to remedy those situations because you don't want to do a big renovation and end up with a same violation

that you had in the grandfathered structure.

BRENDAN SULLIVAN: I think if you do -- well, I don't want to -- if you do more than 50 percent, than you're going to have to comply with the Code. The Code says that anything within three feet of the property line is not permitted unless you sprinkler the entire building.

SLATER ANDERSON: Okay.

BRENDAN SULLIVAN: So you could --

SLATER ANDERSON: You could in theory might have to jog in that corner to go up.

MARK BOYES-WATSON: And I mean, it's an accident of history that it's rotated whatever that few degrees is.

SLATER ANDERSON: Yes.

THOMAS SCOTT: Just to belabor the point, this other architect we tortured a

little bit. And, you know, we had said, you know, is it financially infeasible to renovate the building in place? And we were pressing this person to bring that data to us. I mean, we kind of made a big deal about it. And I'm kind of at the same point here where, you know, I understand why you want to do it. I guess I want more --

JAMES ORFANOS: Can I ask a question?

CONSTANTINE ALEXANDER: Let him finish.

THOMAS SCOTT: I just want more reason to say why we should allow to you do this. Because once the building comes down, your lot is in more -- it's more conforming than it is -- you know, why should we allow you to put it back up?

CONSTANTINE ALEXANDER: And that's

my question, too, and my concern. I think you may have surmised from my questions. You have a blank slate if you tear it down. And why should we allow you to build a non-conforming structure?

JAMES ORFANOS: I'll go to what Mr. Myers said, I think it's just a phase that it passes through. The entire structure is gonna get rebuilt. So the question here is -- we're going to do a good job. If you give us a Variance, we'll do a better job. And everything is feasible. I mean, if we're talking the money, you can do anything with money. We're not really thinking from a cost standpoint. We're just thinking of building a better building.

CONSTANTINE ALEXANDER: But your better building will be better aesthetically from the outside.

JAMES ORFANOS: No, I think it will be a better structure.

TERRY ORFANOS: Oh, no, it will be a better structure.

MARK BOYES-WATSON: I think that there is something important here, and I know the Board grapples with it, but there really is -- from a policy point of view, I mean, when we do these renovations, we are, these buildings were built in 18 -- the 1840s. If we do a proper job now, this is a 100-year renovation we're doing. And it just seems a strange way to go about things to go into what is like a -- to denigrate the ability to keep the pests out of the basement, to build a really tight envelope to, you know, not that I can't -- it just -- for what? I think if there was a harm that was, you know, then it would be very clear to, you know, why would

we grant you that? It's about the GFA, and I don't come to ask you for that. Anyway, I get that -- but none of these things pertain. So we're really asking to be able to do a good job in the renovation that's gonna happen either way, but we need your permission to help, to help us be able to build a building that will last 100 years. And the money that will be spent today is 100 years worth of money. I think that that happens, because I spend a lot of time actually renovating Cambridge houses or designing renovations for Cambridge houses, and you can get twisted into a pretzel around these rules. So anyway, I think that this is an interesting one where the building is, it's the same footprint, it is higher, it's no bigger, the parking space is no different, the open space is no different. One of those cases where it

would be better not to be a pretzel.

THOMAS SCOTT: You know, I guess all I'll say -- all I'll say is that if you're sitting on this side of the table, you know, it just seems to make more sense to renovate the building as opposed to tearing it down. I mean, we have a set of rules, and the rules are saying --

JAMES ORFANOS: So can I ask you a question? I'm sorry for interrupting. So then I would build an inferior building. I will.

THOMAS SCOTT: We're not asking to you do that.

JAMES ORFANOS: In practice that's what will happen.

THOMAS SCOTT: That's not true.

CONSTANTINE ALEXANDER: That's not true at all. The fact of the matter is that

as I say go back to what I said before, if you bought a lot, an empty lot of land, and you came in and you wanted to build a new building on that -- on these dimensions and this location, we would say no. And so you come here -- let me finish. You come here tonight saying we're not doing that, we just want to renovate the building we have. But if you can renovate the building and not increase the non-conformance, that's the path that our Ordinance allows. And particularly you have to go up higher, but you have plenty room. You have another ten feet if space is permitted basically, almost ten feet. So that, as Tom said, if you're on our side of the table, that's the dilemma that we have. We have to apply this Ordinance. You can call it a pretzel. You can call it what you want. The fact of the matter is we're not

supposed to be approving the construction of non-conforming structures unless there's a substantial hardship and special conditions. And in the case that Tom refers to, there were special conditions. There were soil conditions. They had to tear the building down or you couldn't renovate it. You can renovate it. You can do a better job and I absolutely will accept that and assume that, but is that enough for us to grant Zoning relief? You can do a better job. That is our dilemma. Doesn't mean we're not going to vote against it. But that is our dilemma.

Ma'am, I cut off public discussion.

BRENDAN SULLIVAN: Being in the business, we are always faced with the dilemma of repair, replacement. Repair, replacement. And the customers are always saying to me "Should we replace it or just

repair it?" And there's always that 50 percent, you know. And once you tip the scales into, you know, we should have replaced this thing because we have spent an inordinate amount of money to repair it and then we're still back with sort of a repair as opposed to a replacement. Now this is a much bigger repair or replacement, but the principle is still the same thing. And we're faced with this. I'm convinced that it makes more sense not to spend that inordinate amount of time and exercise to repair than it is to replace because the replacement -- and again whether -- having not done the dollars, will be a much better product long term.

CONSTANTINE ALEXANDER: But you're expressing, though, is a very sound business decision in terms of the property owner How should I spend my money? And the issue is not

that, with all due respect, the issue is --

BRENDAN SULLIVAN: Yes, right. And I think if they came in with a two-family in the front and this nice big lot in the back, as we had up in Cushing Street, we do say no. But this building is condensed and it's going to stay there. So it's going to be a structure there.

Now, is our charge to enhance the property values of surrounding and also to provide for a nice structure, a more safe structure, a more liveable structure? And I would say that it tips on the side of yes. And how is that achieved? It's achieved by taking down the other, the existing structure which actually becomes a hindrance to achieving that ultimate goal of having a nice structure there, a footprint of a nice building, and a more liveable building.

DOUGLAS MYERS: I want to say that I completely agree with Brendan's line of argument. So many times we apply hardship -- we, you know, we ask ourselves, you know, how do we interpret and apply this hardship? There are many times when we say a structure is non-conforming, it preexists Zoning, it's in the setback, and we acknowledge that these are factors that create a hardship. And the question really is applying that in this case on these facts with a rule of reason. And I think a reasonable interpretation of hardship in this case is to acknowledge that this, this ancient building in the setback very close, falls into the -- falls into a valid consideration of repair versus replacement enough so that we can say yes, yes, this is a -- this is no violation of the fundamental

role of hardship and Zoning. This is okay. It's modest. It's okay. It doesn't offend anyone's sense of propriety about applying the hardship to this case, and then go on to reason as Brendan has.

CONSTANTINE ALEXANDER: Other discussion by members of the Board or ready for a vote?

I think we're ready for a vote. Okay. And we're going to vote on the Variance and then we are -- I am sorry.

KIRIL ALEXANDROV: Can I ask a question?

CONSTANTINE ALEXANDER: Yes. I didn't let this person speak. It's just a question what's your question? It's not about your wife I hope.

KIRIL ALEXANDROV: No, I'm safe for the time being.

To bring up Brendan's point, the replace versus repair issue, is it cheaper to replace and get a better product or is it going to cost more to repair?

CONSTANTINE ALEXANDER: That's what I think Mr. Boyes-Watson has indicated to us, it will cost more to repair.

MARK BOYES-WATSON: It's almost like where you end up. If you repair -- it's, it's really -- you won't end up in the same place as if you replace.

CONSTANTINE ALEXANDER: Well, that's not his question. What's the cost?

MARK BOYES-WATSON: So, well, if you're looking for financial hardship which we're not arguing, I think that, I find in my practice that maybe it's a little cheaper to actually fully replace than it is to do a really good job of repairing. But it's not

going to, you won't -- we still repair buildings. So it's not a determinative thing.

SLATER ANDERSON: There's a lot more unknowns with a repair.

MARK BOYES-WATSON: There are. And I think, really, really, you're chasing things and you never quite chase them all the way, which is why you end up with an inferior -- you end up having spent your dollars, probably a few more dollars. But the worst thing about it is you haven't done that 100 year renovation. I mean in terms of the effort of a nation, it's a strange way to spend your time to avoid -- it's not the harm -- if there was a harm, if it wasn't egregious or a fronted sensibility, that's one thing, but that's what I mean by the pretzel thing. The sense, it seems you're

protecting who from what. You're protecting -- are you protecting the community from an intrusive building built to a high standard? It's the same building. It seems to me that in that sort of weighing of the scales of that, that if you can do -- if you can avoid the harms and if the neighbors don't regard it as something that they don't want to see, that is negative on them, it's fundamentally the same things that was there, but it's a hundred year renovation.

CONSTANTINE ALEXANDER: Stop the speech.

BRENDAN SULLIVAN: The answer may be that there is no answer because it's on a case by case basis. However, it has to do with value. Value of the dollars spent. Am I getting a better value? You may spend a few more dollars to have a new product as opposed

to a repair. So it has to do with value basically. I'm going to turn into a pumpkin here in about half an hour.

THOMAS SCOTT: My last comment would be just if there was any opposition, I probably would be opposed to the tear down and rebuild. So I'm just --

SLATER ANDERSON: My concern is that the tear down, rebuild this isn't something that when you say it passes through, it doesn't -- it passes through very slowly. And my concern is the person goes by, building gets torn down, and they see nothing on the lot, and, you know, somebody with some sensibility about conformity and Zoning, and they drive by and they start seeing a new house being built in the back, and they're questioning why is there a house being built there now? The house was gone and now

there's a house being built again where you could never build a house. And that, it's that window of time which could very well be months, you never know. I mean, someone doing this would probably want to do it pretty quickly just for that reason.

JAMES ORFANOS: I'm hoping it wouldn't be months.

SLATER ANDERSON: But, you know, things happen. And that's where my discomfort with the tear down is. I would rather see, take it to a shell, straighten it, raise it, do you the foundation under it. You know, work with the volume in some way, and than the full tear down. That's my concern, is that it's not going to be there for a period of time and that is, that's the whole point of our -- what we do is not to perpetuate non-conformity. And we're sort

of giving this one like, you know, a big time out and saying, you know, you can't be there now we're going to put the non-conformity back.

DOUGLAS MYERS: That's why we did -- we had two completely different types of cases, but they were, quote, unquote, accidental demolition cases that had been in a demolished state for a long time and whatever, whatever the rights and wrongs of the outcome, the point is that the fact of being semi-demolished for a long time and lots of people seeing and knowing --

CONSTANTINE ALEXANDER: But that's not a fair -- and I don't want to prolong this discussion. That's not a fair, in y judgment, a fair comparison. In those cases we granted relief because it was a rank in justice. These people didn't do anything

wrong. Their house was torn down by a contractor who shouldn't have torn it down, and to not allow them to rebuild it --

DOUGLAS MYERS: No, I was just saying, I was talking about the fact that the demolition in a demolished state had been for a long time and attracted a lot of attentions. That's all I was saying, not the rights and wrongs.

CONSTANTINE ALEXANDER: Okay, I think we're ready for a vote.

All right. We're doing the Variance and then we'll get to the Special Permit assuming the Variance passes.

The Chair moves that this Board make the following findings with respect to the property:

That a literal enforcement of the provisions the Ordinance would involve a

substantial hardship to the Petitioner. Such hardship being that the Petitioner would be precluded from rebuilding a very old structure to produce a more -- a structure that has greater value both to the Petitioner and to abutters.

That the hardship is owing to the fact that this is a very old non-conforming building located too close to the lot line as a non-conforming building.

And that relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of this Ordinance.

In this regard the Chair notes that there seems to be unanimous neighborhood support for the petition.

That the result, if we grant the relief, would be to improve the quality of the housing

stock of the City of Cambridge which is one of the goals of our Zoning Ordinance.

On the basis of these findings the Chair moves that we grant the Variance being requested on the condition that the work proceed in accordance with the plans submitted by the Petitioner, prepared by Boyes-Watson Architects. There are many pages in length. I've initialed first page.

All those in favor of the granting the Variance on the basis I propose, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Sullivan, Scott, Myers, Anderson.)

CONSTANTINE ALEXANDER: I abstain. Anyway, the Variance is granted.

Let's move on to the Special Permit.

MARK BOYES-WATSON: Leave the site plan more as it is today, but because the building is, because we're now adding a structure, you would ordinarily need to add parking but we are unable to do so. So we ask for a Special Permit to leave the parking as it is today.

CONSTANTINE ALEXANDER: And under our Ordinance Section 6.35.1 states that we have a right to grant the Special Permit you're seeking. But it says a Special Permit shall be granted only if the Board determines and cites evidence in its decision that the lesser amount of parking would not cause excessive congestion, endanger public safety, substantially reduce parking availability for other uses, or otherwise adversely impact the neighborhood.

And then we have to in making the

determination, we can consider the availability of surplus off street parking in the vicinity of the use being served and/or the proximity of an MBTA transit station. The availability of public or commercial parking facilities in the vicinity. That's basically it. So can you just address those?

MARK BOYES-WATSON: Yes. So the -- in terms of adverse impact, there were three units. There are now still three units. So the -- actually there's no net change.

Franklin Street is very proximate to the Red Line, so it has the advantage of being proximate to the T.

CONSTANTINE ALEXANDER: Okay, thank you.

Questions from members of the Board on the parking?

(No Response.)

CONSTANTINE ALEXANDER: None.

I'll open to public testimony.

Is there anyone wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard.

We're not in receipt of any letters, correspondence regarding the parking issue that I'm aware of.

So I will close public testimony.
Anything else you want to add at this point?

MARK BOYES-WATSON: No.

CONSTANTINE ALEXANDER: Discussion from members of the Board? Ready for a vote?

Okay, the Board moves that this Board grant a Special Permit to allow the reduction of parking with regard to this structure that's going to now be built.

That the amount of -- the historical use of the premises is that there have been three residence uses and that will be continued. And so it's not going to increase congestion, endanger public safety. And that there are available public transportation in the vicinity of the use. And that, again, because of the fact that it's been three units -- three occupants or three residential units on the property, there will be no reduction in parking availability. It will be what was before.

By the way, you're going to have two units in the front and one in the back. It was three before and three after?

MARK BOYES-WATSON: Yes.

CONSTANTINE ALEXANDER: Just to confirm that.

We also have to make further findings

for the Special Permit.

The Board will propose to make the following findings:

That traffic generated or patterns of access or egress will not cause congestion, hazard, or substantial change in established neighborhood character.

That the continued operation of adjacent uses will not be adversely affected by the nature of the proposed use.

That no nuisance or hazard will be created to the detriment of the health, safety, or welfare of the occupant of the citizens of the city.

And that the proposed use will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this Ordinance.

With regard to that last point, the Chair would note and make it as part of our findings, that the City of Cambridge has now adopted a policy of discouraging the amount of on-site parking in order to encourage people not to have cars and to use other forms of transportation. And the relief being sought is consistent with that current goal of the City of Cambridge.

All those in favor of granting the Special Permit on the basis of the findings I just cited, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

(Alexander, Sullivan, Scott, Myers, Anderson.)

* * * * *

(11:40 p.m.)

(Sitting Members Case #10524: Constantine Alexander, Brendan Sullivan, Thomas Scott, Douglas Myers, Slater W. Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10524, 194 Franklin Street.

Is there anyone here wishing to be heard in on this matter?

JAMES ORFANOS: James Orfanos,

member 192-194 Franklin Street, LLC, 50
Hancock Street, Cambridge, Mass.

TERRY ORFANOS: Terry Orfanos,
member 192-194 Franklin Street, LLC, 50
Hancock Street, Cambridge.

MARK BOYES-WATSON: Mark
Boyes-Watson, Boyes-Watson Architects, 30
Bows Street, Somerville.

CONSTANTINE ALEXANDER: Go ahead.

MARK BOYES-WATSON: The Special
Permit pertains to the front duplex at the
address. And the -- on the right-hand side
setback it is not -- it does not meet the
required setback. It's an existing
building. We are seeking to take three
windows on that facade and raise them about
two feet which constitutes a change in an
opening on a non-conforming facade. It
requires in order that we be allowed to do

that, that we seek a Special Permit from the Board.

So as you can tell, the before and after is rather similar, but it does trigger because -- because of the relocation of those openings, those dotted lines is where they are today, it triggers the requirement for us to be allowed to do this of seeking a Special Permit from you.

CONSTANTINE ALEXANDER: Do you have another set of plans?

MARK BOYES-WATSON: Yes, I do.

CONSTANTINE ALEXANDER: I saw you have one plan that shows -- we need that for ISD -- shows where the windows are today and where they will be if we grant relief.

MARK BOYES-WATSON: Yeah, yeah.

CONSTANTINE ALEXANDER: And I'm having trouble locating it. It's just one

sheet as I recall.

MARK BOYES-WATSON: I think it's in here.

It is page -- yeah, it is page A402 in your set.

CONSTANTINE ALEXANDER: Yes, that's it.

MARK BOYES-WATSON: A402.

CONSTANTINE ALEXANDER: Okay.

MARK BOYES-WATSON: And the dotted lines indicate where it was.

CONSTANTINE ALEXANDER: Yes. And for the benefit of the members of the Board can see where the windows are now and where they will be if we grant relief which is what we need.

Okay, that's all she wrote?

MARK BOYES-WATSON: That's all she wrote.

CONSTANTINE ALEXANDER: First, any questions from members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: Appears to be no questions at this point. I'll open it up to public testimony.

Is there anyone wishing to be heard on this relocation of windows?

(No Response.)

CONSTANTINE ALEXANDER: No one wishes to be heard.

There's nothing in the files on this issue. So I think we're ready for -- unless we have further discussion, ready for a motion.

So the Special Permit, because as you say, relocating windows within a prescribed -- post-described setback. We have to make the same old findings with regard

to the Special Permit. I should have it memorized by now.

The Chair moves that this Board make the following findings:

That traffic generated or patterns of access or egress as proposed will not cause congestion, hazard, or substantial change in established neighborhood character.

The change the relocation of windows is rather modest in nature and is not, has no -- well, I'll get no to that next.

The operation or development of adjacent uses will not adversely affected by what is being proposed. It's just relocating windows, it's not adding a lot of new windows which might create privacy issues, but just slightly modifying the location of existing windows.

No nuisance or hazard will be created

to the detriment of the health, safety, and welfare of the occupant or the citizens of the city.

And the what is being proposed will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this Ordinance.

In that regard, the Chair again would note that the relocation of windows is rather modest in nature and has no neighborhood impact.

So on the basis of all of these findings, the Chair moves that a Special Permit be granted the Petitioner on the condition that the work proceed in accordance with this plan numbered A-402 and initialled by the Chair.

All those in favor of granting the

Special Permit say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

(Alexander, Sullivan, Scott, Myers, Anderson.)

* * * * *

(11:45 p.m.)

(Sitting Members Case #10526: Constantine Alexander, Brendan Sullivan, Thomas Scott, Douglas Myers, Slater W. Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10526, 29 Dover Street.

Is there anyone here wishing to be heard on this matter? Okay, you're here seeking a

Variance. Give your name and address to the stenographer.

ADAM GLASSMAN: My name's Adam Glassman. I'm the architect for the owner of 29 Dover Street.

PATRICIA RAVETTO: My name is Patricia Ravetto. I'm one of the owners of 29 Dover Street.

CONSTANTINE ALEXANDER: You're looking for a Variance to build a mudroom and a rear deck addition. You have two problems I guess. Your FAR will go from 0.55 to 0.96 in a district that's 0.5. So you're slightly over now, non-conforming, and you'll slightly increase it. And you also have a right yard setback issue. Right now you're virtually on the right yard lot line. You're four-tenths of a foot from it, and you'll go 6.9 -- further away, but you're supposed to

be seven and a half feet. Those are your problems or issues. That's why you're here tonight and had to kill your night here.

Okay, why should we grant relief? You have heard the requirements for a Variance.

ADAM GLASSMAN: I have. Well, let's start with we have a growing family committed to the city, committed to the community. Their house is very efficient. It's modest in size. Frankly, they just need a little bit more breathing room. In what they're looking for in addition to breathing room, the interior is a bit of a buffer between the exterior and their first floor which is essentially one open space. As you can imagine wintertime, snow, cold, gusts of wind, rain. And that's really the main issue.

The other issue that they're looking to

achieve is create more of a connection between their backyard which is also very modest in size, but it's quite beautiful and they're just looking to have more direct access to it. And architecturally there's also something modest. It doesn't compete with the front portion of the two-family house which is a beautiful vintage Cambridge architecture. It sits behind, it's concealed and doesn't take away from it, and it gives what was an originally constructed as a back of house something of a front facade a proper entry. Neighbors are all supportive. You have the letters. No one is objecting.

CONSTANTINE ALEXANDER: And these are the plans?

ADAM GLASSMAN: Those are the plans.

CONSTANTINE ALEXANDER: And as you

heard, when we approve relief, we tie them to these plans. So these are the final plans?

ADAM GLASSMAN: They are the final plans.

CONSTANTINE ALEXANDER: Okay.

Questions from members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: No questions.

Is there anyone wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: No one wishes to be heard.

We do have a number of letters in the file. Time is late. Actually, they're all identical form letters signed by different persons. There's one other letter that is different that I do want to read into the record. Anyway, this is a condominium?

PATRICIA RAVETTO: Correct.

CONSTANTINE ALEXANDER: So you would need, from a condominium point of view, an approval of the condominium association or trustee because you're modifying the exterior structure --

PATRICIA RAVETTO: That's right.

CONSTANTINE ALEXANDER: -- and you do -- and you have that letter which I'll read in a second which is important to have.

Okay, the letters we have -- we have a letter in multiple forms. It says: I'm writing to support the request by Patricia Ravetto and Flavio Ferreira for a Variance to build an addition to their residence. I've reviewed the architectural drawings, plans, and elevations for renovation and addition proposed and believe this modest addition to their living space will represent a

significant improvement to the property from our point of view as abutters and neighbors. I cannot see any detriment to the public good or any real damage to the purpose of the Zoning Ordinance and fully support the proposal for which a Variance is being requested. And this letter is signed by Vincent Demeo, D-e-m-e-o and Rita Demeo who reside at 35 Dover Street. By Thomas Walsh W-a-l-s-h, who resides at 28 Dover Street. By Riva Meyer, M-e-y-e-r and Wayne Welke, W-e-l-k-e if I got it right, who resides at 30 Dover Street, No. 3. And also by Amy Smith and Dini, D-i-n-i Vesal, V-e-s-a-l who reside at 30 Dover Street, No. 1.

We also have a letter from Thomas Frost, Jr. who resides at 29-31 Dover Street, unit 31. It says: As a trustee of the 29-31 condominium trust and as a neighbor, I am

writing to support the request by Patricia Ravetto and Flavio Ferreira for a Variance to build a mudroom and deck addition to their residence. And it goes on as I said before, the other letters say, I've reviewed the architectural drawings and see no detriment to the public good.

And there's one other letter that's different from the other letters at least in terms of form, it is signed by JoAnn Smith, and Terence Smith with who reside at 16 Meachem Road. (Reading) We have no objection to the request by Patricia Ravetto and Falvio Ferreira for a Variance to build an addition to their residence. We have reviewed the architectural drawings, plans and elevations for the renovations and addition proposed. We have no objections to the proposal for which a Variance is being

requested.

That's all we have.

Questions from members of the Board or ready for a vote?

Okay. The Chair moves that this Board make the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a hardship to the Petitioner. Such hardship is a growing family needs additional space for a mudroom and better access to the rear yard of their property.

The hardship is owing to the circumstances related to the fact that this is a non-conforming structure. And therefore any relief requires approval from this Board.

And relief may be granted without substantial detriment to the public good or

nullifying or substantially derogating from the intent and purpose of this Ordinance.

In this regard the Chair notes that there is unanimous support from the neighbors.

That the relief being sought is rather modest in nature.

On the basis of these findings the Chair moves that a Variance be granted to the Petitioner to proceed on the condition that the work proceed in accordance with the plans submitted by the Petitioner, the first page of which is has been prepared by GCD Design. Well, Glassman, Chung Design Architects. And the first page in which has been initialled by the Chair.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Variance

granted.

(Alexander, Sullivan, Scott, Myers,
Anderson.)

* * * * *

(11:55 p.m.)

(Sitting Members Case #10525: Brendan
Sullivan, Thomas Scott, Douglas Myers,
Slater W. Anderson.)

CONSTANTINE ALEXANDER: I'm going

to just say -- please come forward and I'm going to say a few words and I'm going to disappear. But I have to read you your rights. I know you've been read them before, but I want to get it on the record.

You need -- to get relief you need four votes, four out of five votes. The five of us. I'm going to recuse myself from this case for personal reasons. Therefore, there's only four people sitting. You have to get a unanimous vote. And unlike other cases whether unanimous, people got relief. But now if you go forward tonight, you have to get a unanimous vote. So statistically at least your task is more difficult.

You have a choice. You could -- I hate to tell you this now. You could continue the case until another night when there will be five of us present and your statistical odds

will be increased. So it's your decision whether you want to go forward tonight with the four, and myself not being included or not, what's your choice.

CHARLES ANDERSON: We're happy to move forward with four people.

CONSTANTINE ALEXANDER: Brendan, do you want to Chair this part of the meeting?

DIANE GRAY: I'm Diane Gray, G-r-a-y from Harvard.

BRENDAN SULLIVAN: If you would make your presentation as to the relief being requested and the reason for it.

DIANE GRAY: Okay, so the Center for Studies For World Revisions is here tonight to request Zoning relief for setbacks for a new freestanding sign to identify the building it's address and the path to the accessible entrance.

The hardship is that the main gate of the center is obscured by a large tree and the center -- a literal -- a freestanding sign at this location is required to be ten feet from the property line. Because the tree is there, ten feet would be behind the tree and wouldn't be an effective sign. So our proposal is in front of the tree, 18 inches from the property line.

The sign was designed to be sympathetic to the modernist architecture of the building and it has been reviewed with the Executive Director of the Cambridge Historical Commission and the Planning Board.

DOUGLAS MYERS: Is there any comparable sign in the front location today?

DIANE GRAY: No, there's one sign on the property which is right here behind the tree.

DOUGLAS MYERS: Oh, barely visible.

CHARLES ANDERSON: Yes, exactly.

The one piece I wanted to emphasize of importance is that not a lot of people are aware that it's also a residential community. There are 13 apartments. And one of my concerns is always safety and security for those residents and emergency responders being able to identify the building quickly. It's also in a fairly dark area of Francis Avenue, and this sign would be very helpful I think to add to our student safety.

BRENDAN SULLIVAN: The -- what is the specific violations -- what is the area of the signage?

DIANE GRAY: The new sign is 7.5 square feet. It's 4.3 feet by 1.75 feet.

BRENDAN SULLIVAN: So that the only real violation is the location. Under

Section 7.16.21b, the location needs to be half the depth of the required front yard if freestanding?

DIANE GRAY: That's right.

BRENDAN SULLIVAN: And what you're saying the imposition of that creates problems, practical problems, comings and goings to the general public and to the community?

DIANE GRAY: Yes, you wouldn't be able to see it because of the tree.

BRENDAN SULLIVAN: Okay, so that is the tipping point for requesting relief. Okay.

Any questions from the Board at all?

DOUGLAS MYERS: Could you put it in another location in front of the building where you would not --

DIANE GRAY: We did consider that

and --

DOUGLAS MYERS: It would not create the technical violation?

DIANE GRAY: What happens is if it's -- if it's over on this side, then it's away from the main entrance and it doesn't really show where the accessible path is which is right here. And then it has people crossing across a parking area. There's two parking spaces right there. So that's why we considered this to be the best location.

DOUGLAS MYERS: It would misdirect people away from the entrance.

DIANE GRAY: Yes.

CHARLES ANDERSON: There's often confusion for people when they approach the center, they don't really know where the main entrance is.

SLATER ANDERSON: So you say there's

residents in the same building?

CHARLES ANDERSON: Yes, it's a multi-use facility. In that way there are administrative offices, faculty offices, and 13 residential apartment.

SLATER ANDERSON: Are they accessed from a different location than the residential units?

CHARLES ANDERSON: No. All the residents go in through that same --

SLATER ANDERSON: The same access?

CHARLES ANDERSON: Yes.

BRENDAN SULLIVAN: Any other questions?

THOMAS SCOTT: Is the sign illuminated?

DIANE GRAY: No.

DOUGLAS MYERS: Just a plain wooden sign?

DIANE GRAY: Yes.

BRENDAN SULLIVAN: Okay, let me open it to public testimony.

Is there anybody here who wishes to be heard on the matter?

(No Response.)

BRENDAN SULLIVAN: I see none.

There is no correspondence in the folder. And I believe the Planning Board has left the decision up to the Board for its proper consideration.

Okay, let me close public comment.

Anything else?

Let me make a motion, then, to grant the relief requested.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner.

The Board finds that the Center for World Religions at the Harvard Divinity School has admission to advance interdisciplinary, international, and interreligious exchanged learning and research on the world's major religions and special traditions.

The Board finds that the center regularly hosts academic programs, withdraws visitors from across Harvard's schools and campus. The building is surrounded in all but one side with properties owned and affiliated with Harvard.

The Board finds that the building currently has one sign location directly at the entrance. At this entrance area it is set back more than 30 feet from the property line and is located behind the large mature tree, hence it is very difficult to see the

signage from the public way and therefore is often overlooked.

The Board finds that a literal enforcement of the provisions of 7.16 would require that the signage would have to be setback an additional 8.5 feet and would place it behind a very large tree and as such very -- not visible from the street. Hence the location as in the application is more desirable and also easy to identify the entrance to the building.

The Board finds that the hardship is owing to the location of the main entrance to the center which is obscured behind a large mature tree which makes identification of the building quite difficult for visitors who are not familiar with the building and who generally arrive on foot. To properly guide these visitors to the entrance, signage is

best placed on the south side of the driveway closest to the pedestrian path leading to the entrance as per the application.

The Board finds that desirable relief may be granted without substantial detriment to the public good.

The requested Variance is needed to properly identify The Center for the Study of World Religions and its main entrance.

The granting of the Variance will not be a detriment to the public good. And on the contrary the granting of the Variance will in fact be a benefit to the public good as it will guide visitors to the center and it's an accessible path is a clear and direct way. It will also allow the building to receive first responders to clearly identify the building as there are residents contained in the building.

The Board finds that relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance.

And the request of the Variance will allow the replacement of the identification sign to guide visitors to this facility which is consistent with the Ordinance assertion that the public interest is served by use of signs by businesses and services to identify their premises or their products or services there available.

All those in favor of granting the requested relief.

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.

(Sullivan, Scott, Myers, Anderson.)

(Whereupon, at 12:00 a.m., the

Board of Zoning Appeal

Adjourned.)

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The original of the Errata Sheet has been delivered to Inspectional Services.

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 BRISTOL, SS.**

I, Catherine Lawson Zelinski, a Certified Shorthand Reporter, the undersigned Notary Public, certify that:

I am not related to any of the parties in this matter by blood or marriage and that I am in no way interested in the outcome of this matter.

I further certify that the testimony hereinbefore set forth is a true and accurate transcription of my stenographic notes to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of November, 2013

Catherine L. Zelinski
Notary Public
Certified Shorthand Reporter
License No. 147703

My Commission Expires:
April 23, 2015

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